TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914

No. 4 [redacted]

THE PEOPLE OF PORTO RICO, APPELLANTS,

vs.

PIERRE EMANUEL, BARON DE LAURENS D'OISELAY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

FILED AUGUST 9, 1910.

(22,289.)

(22,289.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 668.

THE PEOPLE OF PORTO RICO, APPELLANTS,

vs.

PIERRE EMANUEL, BARON DE LAURENS D'OISELAY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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1 THE UNITED STATES OF AMERICA.
District of Porto Rico, ss:

At a stated term of the District Court of the United States for Porto Rico, within and for the district aforesaid, begun and held at the Court rooms of said Court, in the City of San Juan, on the second Monday of April, being the twelfth day of that month, in the year of our Lord One Thousand Nine Hundred and Nine, and of the Independence of the United States of America the one hundred and thirty-third.

Present: The Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico.
Among other were the following proceedings, to wit:

Complaint.

(Filed July 23, 1908.)

In the United States District Court for Porto Rico, Sitting at San Juan.

PIERRE EMMANUEL, Baron du Laurens d'Oiselay, Plaintiff.
vs.
THE PEOPLE OF PORTO RICO, Defendant.

Recovery of Rents and Mesne Profits

To the Honorable Bernard S. Rodey, Judge:

The plaintiff herein, Pierre Emmanuel Baron du Laurens d'Oiselay, a citizen of the Republic of France, and a resident thereof, by his attorneys Federico Degetau and Bonifacio Sanchez, respectfully complaints and alleges:

I.

That on the 4th day of September, 1900, your plaintiff was the sole owner and possessor of the estate described as follows:

Rural, composed of four thousand, one hundred and thirty-three cuerdas of land (4,133) equivalents to one thousand, six hundred and twenty-four hectareas, fourty three areas, and three centiareas (1624 hec. 43 ar. 3 cent) located in the Barrios of Piletas and Callejones of the Municipality of Lares, in the judicial District of
2 Aguadilla; planted with coffee, pasturages and "maderas."

The e lands are bound on the North with lands of Don Jose Gregorio Velez; on the South with lands of Don Miguel Jesus Colon; on the East with the River of Camuy; and, on the West with lands of Don Juan Jose Lopez.

These lands were acquired by your plaintiff as a legacy from the

Duchess de Mahon Crillon, who died in Avignon, France, on April, 1899.

II.

That until the year 1899, the Duchess de Mahon Crillon, had been paying the taxes and receiving from her colonists an annual income amounting to three thousand six hundred dollars ($3,600) or thereabout.

III.

That on the 4th day of September, 1900, the defendant herein, through the Treasurer of Porto Rico, decided that the said described property belonged to the Estado, then to the Treasury of Porto Rico, and that the Duchess de Mahon Crillon could not appear in the assessment, and ordered, among other things, that the Duchess be immediately eliminated from the assessment of that property; that the "terratenientes" (landholders, or colonists) be made to appear in the assessments instead of said Duchess, and that they proceed to deliver the deeds or titles of concessions that they might possess which gave them the right to the use and fruits (usufructo) of the lands to be sent to the Treasury; and thereby wrongfully deprived your plaintiff of his ownership over said property and its rents, the said property having *being* recorded in the Registry of the Property in the name of the People of Porto Rico, the defendant herein, without having heard your petitioner, or even summoned him to be heard.

IV.

That in view of this action of the People of Porto Rico and after having vainly tried to obtain satisfaction from the defendant herein, your plaintiff, Baron Laurens d'Oiselay was obliged to establish the validity of his titles over said property before the Courts. Your plaintiff instituted a suit in the District Court of San Juan on January 30, 1901, against the defendant herein. The District Court of San Juan decided on August 1st, 1902, that the lands re-
3 ferred to, were the property of your plaintiff and ordered that the inscription made in the Registry of the Property in the Name of the People of Porto Rico be cancelled. The People of Porto Rico, took an appeal to the Supreme Court of Porto Rico, and said Supreme Court affirmed the decisions and confirmed the findings of the District Court by its opinion of May 23, 1904. (Decisiones de Puerto Rico, Vol. 2, page 103.)

V.

That after the question of the title was decided by the Courts your plaintiff tried without success to reorganize the administration of his estate, as the People of Porto Rico did nothing to put again your plaintiff in possession of the property. The colonists were not willing to pay again the rents to your plaintiff and he was obliged to resort to the courts of justice again to be put into possession of his own lands.

VI.

That by virtue of the actions exercised in the previous suits your plaintiff has obtained possession of his property, but your plaintiff is also entitled by right of accession and by the laws in force, to the fruits produced, or *or* that might have been produced, of which, he has been deprived by the action of the defendant herein, from the day in which he was unjustly deprived of his ownership until the day in which his property was delivered back to him.

Wherefore your plaintiff respectfully requests a judgment against the defendant herein for the rents and mesne profits during the time elapsed between the desezing and the restoration of his property, namely, from September 1, 1900, to December, 1905, which, for the purposes of this claim, and in the opinion of your plaintiff, amounts to the sum of thirty-two thousand dollars ($32,000) or thereabout; this amount to be determined by experts if so decided; the legal interests of the exact amount from the day in which your plaintiff claimed his property through the courts; and costs of this suit.

San Juan, P. R., June 10th, 1908.

(Signed) FEDERICO DEGETAU,
BONIFACIO SANCHEZ,
Attorneys for the Plaintiff.

I, I. Nicolas Yturregui y Arocena, after being duly sworn declare: That I am the attorney in fact of the plaintiff in this action; that I have read the foregoing complaint, and know the contents thereof, and that it is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters I believe — to be true. The reason this verification is not made by the plaintiff, is that he is not residing in Porto Rico, but in the Republic of France.

(Signed) N. YTURREGUI.

Subscribed and sworn to before me by Nicolas Iturregui y Arocena, who is personally known to me, of 53 years of age, a property owner and a resident of Cataño, (Bayamon), this 13th, day of June 1908.

(Signed) GABRIEL GUERRA,
[SEAL.] *Notary Public.*

Summons.

(Filed July 24, 1908.)

In the District Court of the United States for Porto Rico.

No. 574.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY, Plaintiff,
vs.
THE PEOPLE OF PORTO RICO.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States of America to the People of Porto Rico, Greeting:

You are hereby notified that there has been filed in the Clerk's Office of the District Court of the United States for Porto Rico a certain complaint by the above named plaintiff against you in which he alleges that in September 4, 1900, he was the sole owner of an estate, the description of which is found in the accompanying copy of complaint, which estate was acquired by him as a legacy left him by the Duchess de Mahon Crillon who died in Avignon, France, in 1899; that up to the latter year she had paid the taxes to the Estate, and had received from her landholders of said estate and annual income of $3,600 or thereabouts; that on September, 1900, The Treasurer of Porto Rico representing defendant herein, gave orders that her name do not appear in the assessment of said estate and that her landholders proceed to deliver to the Treasury Department the deeds or titles of concession under which they held possession of said lands; that said property was then registered by said Treasurer of Porto Rico in the Registry of Lands under the name of the defendant herein, plaintiff being thus deprived of the ownership of said lands, without even summoning him to appear to be heard; that he (plaintiff) then brought suit against you to establish the validity of his title before the District Court of San Juan, which Court decided in his favor under date of Aug. 18, 1902, ordering that the inscription made in favor of the people of Porto Rico be cancelled, which decision was confirmed by the Supreme Court of Porto Rico on May 23, 1904; that in order to be put in possession of his lands he then again had to resort to the Courts of Justice; that by virtue of the above-mentioned judicial actions he has been put in possession of his lands; but that he is entitled by right of accession and by law to the fruits produced or that might have been produced by said lands and of which he has been deprived by the action of the defendant herein, from the day in which he was unjustly deprived of the ownership of his lands until the date in which he recovered same. Wherefore he prays judgment against you for the amount of $30,000 or thereabouts, together with legal interest on the exact

amount, from the day in which plaintiff claimed his property through the courts, and for the costs of this suit.

You are hereby required to appear and answer said complaint within ten (10) days from the date of the service hereof, otherwise the plaintiff will apply to the Court for the relief demanded in the Complaint.

6 Witness the Hon. Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, and the Seal thereof, at San Juan, this 23rd day of July, A. D. 1908, and in the 133rd year of the Independence of the United States of America.

Attest:

(Signed) JOHN L. GAY, *Clerk*.
[SEAL.] By C. A. DAVIDSON, *Deputy*.

Return on Service Writ.

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed writ on the therein named people of Porto Rico by handing a true copy to Henry M. Hoyt Attorney General of Porto Rico and by handing to and leaving a true and correct copy thereof together with a copy of the complaint with Regis H. Post Governor of Porto Rico both personally at San Juan in said District on the 24th day of July, A. D. 1908.

(Signed) H. S. HUBBARD,
U. S. Marshal.
By PAUL A. ENGLISH, *Deputy*.

Demurrer to Complaint.

(Filed August 4, 1908.)

In the District Court of the United States for Porto Rico.

No. 574.

BARON PIERRE EMMANUEL DE LAURENS DE OISELAY, Plaintiff,
vs.
THE PEOPLE OF PORTO RICO, Defendant.

Recovery of Rents and Mesne Profits.

Demurrer to Complaint.

The defendant demurs to the complaint filed herein, and for cause of demurrer alleges

7 I.

That this Court has no jurisdiction in the premises, because it appears from the face of the complaint herein that the subject matter

involved in this suit is, as to this defendant at least, *res adjudicata* by reason of the several judgments rendered and entered in the various actions instituted by the plaintiff in regard to the lands and premises described in said complaint, in which said actions the liability of this defendant, if any, should have been litigated and determined.

II.

That there is a defect and misjoinder of parties defendant herein in that it clearly appears from the face of plaintiff's complaint that the alleged torts and wrongful acts complained of, if committed at all, were not committed by this defendant acting through a special agent duly authorized thereunto or otherwise.

III.

That there is a defect and misjoinder of parties defendant herein in that it clearly appears from the face of plaintiff's complaint that the alleged torts and wrongful acts complained of, if committed at all, were not committed by this defendant or by any officer or agent of this defendant acting within the scope of his authority as such officer or agent.

IV.

That there is a defect and misjoinder of parties defendant herein, because it clearly appears from the face of plaintiff's complaint that the alleged torts and wrongful acts complained of, if committed at all were not committed by this defendant, but by one J. H. Hollander, acting beyond the scope of his authority as Treasurer of Porto Rico, but not as the special agent of this defendant or in any other authorized representative capacity, and for whose misfeasance, laches, or unauthorized exercise of power this defendant is in no wise responsible or liable.

V.

That there is a defect and misjoinder of parties defendant herein in that it clearly appears upon the face of the plaintiff's complaint that this defendant has never been in the possession, control or management of the lands or premises described in plaintiff's said complaint, and has never received any of the fruits, rents, or profits thereof sought to be recovered herein, or for which an accounting is demanded by plaintiff.

VI.

That there is a defect of parties defendant herein in that it clearly appears upon the face of plaintiff's complaint that the fruits, rents and profits, if any at all, sought to be recovered or accounted for herein were never in fact received by this defendant or by any agent or officer of this defendant, special or otherwise.

VII.

That there is a defect and misjoinder of parties defendant herein in that it clearly appears upon the face of plaintiff's complaint that throughout the whole period during which plaintiff avers himself to have been deprived of the possession of the lands and premises described in his said complaint, and of the fruits, rents and profits thereof, the said lands were in fact possessed and actually occupied and the said fruits, rents and profits received, if at all, by tenants or extenants of plaintiff, or other persons to this defendant unknown, and not by this defendant or by any agent, special or otherwise, or any officer of this defendant duly authorized thereunto or acting within the scope of his authority or otherwise.

VIII.

That there is a defect and misjoinder of parties defendant herein in that it clearly appears upon the face of plaintiff's said complaint that if the said lands and premises, or the said fruits, rents and profits thereof, or any of same, at any time, came into the possession or hands of the said J. H. Hollander, the said possession was acquired and the said appropriation or conversion of rents, fruits and profits was made by the said J. H. Hollander, not as agent special or
9 otherwise or as an officer of this defendant acting within the scope of his authority, but in a private and in a personal capacity, or if otherwise, then in the exercise of an unauthorized power, for which malfeasance this defendant is in no wise responsible or liable.

IX.

That the complaint does not state facts sufficient to constitute a cause of action, because the same wholly fails to show or in any wise aver that the alleged torts and wrongful acts complained of, if committed at all, were in fact committed by this defendant acting through a special agent duly authorized thereunto or otherwise; or by any officer or agent of this defendant acting within the scope of his authority as such officer or agent, or by the said Treasurer of Porto Rico within the scope of his authority as such Treasurer, or as the special agent of this defendant or in any other authorized representative capacity; or that this defendant has ever been in actual possession, control or management of the lands or premises described in plaintiff's complaint, or has ever received any of the fruits, rents or profits thereof sought to be recovered, or for which an accounting is demanded by plaintiff; or that the fruits, rents and profits, if any at all, sought to be recovered or accounted for herein were ever in fact received by this defendant, or by any agent or officer of this defendant, special or otherwise; or that if the said lands and premises or said fruits, rents and profits thereof, or any of same, at any time came into the possession or hands of the said J. H. Hollander, the said possession was acquired or the said appropriation of rents, fruits and profits was made by the said Hollander as the special agent or as an officer of this defendant acting within the scope of his authority as such agent or officer.

X.

That the complaint does not state facts sufficient to constitute a cause of action in that it wholly fails to show that the possession of the lands and premises described in said complaint was acquired or retained by this defendant, if at all, in bad faith or by virtue of a title insufficient in its terms and conditions to transfer the ownership thereof or with any knowledge of existing defects in such title; it clearly appearing on the contrary, from the face of said complaint, that this defendant acquired the said possession, if at all, in the best of faith, retaining the same, if at all, as a bona fide possessor holding as owner by virtue of a title sufficient in its terms and conditions to transfer ownership, in entire and complete ignorance of any defects therein.

XI.

That the said complaint does not state facts sufficient to constitute a cause of action, in that the same wholly fails to show or allege that the tenants or ex-tenants of plaintiff, in said complaint averred to have repudiated the title of said plaintiff as landlord, setting up adverse claims against the same in their own behalf, ever attorned to this defendant as landlord, possessory owner or otherwise, or that this defendant has ever reaped or received any part or portion of the fruits, rents or profits sought to be recovered or accounted for; it appearing, on the contrary, from the face of said complaint that this defendant has never received any of such rents, profits or proceeds, but, on the other hand, has even been deprived of the taxes due this defendant from plaintiff upon said lands and premises as having accrued thereon during the period for which plaintiff seeks to recover.

XII.

That several causes of action have been improperly united, if any at all has been stated in said complaint, in that it clearly appears upon the face of the latter that plaintiff seeks to combine an action in tort, for damages growing out of the alleged wrongful act of this defendant in erroneously considering and treating the lands and premises described in said complaint as having escheated and reverted to the State, with an action for an accounting and a suit for the recovery of the fruits, rents and mesne profits produced, or that might have been produced during the interval intervening between the day upon which the plaintiff avers himself to have been unjustly deprived of his ownership and the date upon which the possession of his property was restored to him; it clearly appearing from the face of said complaint that none of the several causes of action indicated, or at least and beyond question that neither of the two causes of action last above mentioned affects in any way this defendant, the said several causes of action requiring different places of trial if the same are to be properly tried, after

having made the real parties in interest parties defendant thereto, and the same not being in said complaint or otherwise separately stated.

XIII.

That the complaint is ambiguous, unintelligible, and uncertain, in that, while the caption of said complaint would suggest a suit for recovery of rents and mesne profits merely, it is impossible to determine from the body thereof whether the action sought to be instituted is that indicated by the said title or a bill for accounting, or an action in tort based upon the alleged wrongful act of this defendant in treating as having reverted and escheated to the state the lands and premises in said complaint described, or an attempted combination of several distinct causes of action without separate statement thereof; and in that it is impossible to determine from the face of said complaint in what manner or upon what theory or in what sum or proportion of the total amount involved this defendant is sought to be held liable upon each or any one of the several causes of action attempted to be set up, though not separately stated; and in that the said complaint does not contain any adequate, clear or definite statement of facts constituting a cause of action or any one of the several causes of action attempted to be combined without separate statement thereof or even approximate indication of the amount either of money or damages sought to be recovered in each or any one cause or any exact or accurate statement of the sum total of such monies or damages; and in that the said complaint does not contain any statement as to whether the approximate sum
12 total demanded consists solely of rents and mesne profits or wholly or in part, or in what proportion of damages for the withholding of the lands and premises in the said complaint described, or for waste committed thereon; and in that the said complaint contains no statement of any of the circumstances indicated in paragraph IX., X., and XI. hereof, or any other recital of facts sufficient to constitute any concrete cause of action or ground upon which this defendant could be justly called upon to answer; and in that the said complaint is otherwise so vague, unintelligible and uncertain that it is impossible for this defendant intelligently to answer or otherwise plead to the same.

(Signed) H. M. HOYT,
Attorney General and Attorney for Defendant The People of Porto Rico.

13 *Answer.*

(Filed August 6, 1908.)

In the District Court of the United States for Porto Rico

No. 574.

BARON PIERRE EMMANUEL DU LAURENS DU OISELAY, Plaintiff.
vs.
THE PEOPLE OF PORTO RICO, Defendant.

Recovery of Rents and Mesne Profits.

Answer to Complaint.

The defendant by its attorney, the Attorney General of Porto Rico, answering the complaint of the plaintiff herein says:

That this defendant has no knowledge sufficient to enable it to answer the several allegations in said complaint contained in the manner and form in which the same are therein set forth, and therefore denies generally and specifically upon information and belief each and every allegation in said complaint contained.

(Signed) H. M. HOYT.
Attorney General, Attorney for the Defendant.

Copy of Minute Order of November 4, 1908.

No. 574. Law.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY.
vs.
THE PEOPLE OF PORTO RICO.

This cause comes on to be heard upon the general demurrer of the defendant to the complaint. Before proceeding counsel for plaintiff requests and is granted leave to amend by interlineation certain typographical errors in the complaint, and the defendant is permitted to file an amendment and addition to the demurrer in the premises. Whereupon the hearing on the demurrer and the pleadings as thus amended is proceeded with, Messrs. Degetau, Sanchez, and Lopez Landrón appearing for the plaintiff and
14 J. Henri Brown, Esq., Assistant Attorney General of Porto Rico, for the defendant. And the Court having heard argument in that behalf by the said respective counsel, takes the matter under advisement, the understanding being that the Assistant Attorney General shall have until November 21st instant to file a brief, and the opposite side have the right to file a reply brief on or before December 1st next.

Amended Demurrer.

(Filed Nov. 4, 1908.)

In the District Court *for* the United States for Porto Rico.

No. 574. Law.

BARON PIERRE EMMANUEL DU LAURENS DU OISELAY, Plaintiff.
vs.
THE PEOPLE OF PORTO RICO, Defendant.

Recovery of Rents and Mesne Profits.

Amended Demurrer.

Now comes the defendant in the above entitled cause and amends his demurrer heretofore filed herein and for further cause of demurrer alleges:

That it appears upon the face of Plaintiff's complaint that his right of action is barred by the provisions of Section 1869 of the Civil Code of Porto Rico.

Wherefore defendant prays that said complaint be dismissed and judgment given for defendant.

(Signed) J. H. BROWN,
Acting Attorney General and Attorney for Defendant,
The People of Porto Rico.

15 *Minute Order—Journal Entry, February* 16, 1909.

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY,
vs.
THE PEOPLE OF PORTO RICO.

This cause is before the Court on the issue made by the demurrer of the defendant to the complaint, which was heretofore submitted on the briefs of the respective counsel after due oral argument in that behalf had. And now, on this day, the Court being fully advised in the premises, sends to the files a memorandum giving its reasons therefor and in accordance therewith it is:

Ordered that said demurrer be, and the same hereby is overruled. The Court reserves rights as to its future action as in the said memorandum set forth.

Memorandum Overruling Demurrer.

(Filed Feb. 16, 1909.)

In the District Court of the United States for Porto Rico.

574. Law.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY,
vs.
THE PEOPLE OF PORTO RICO.

Memorandum.

On our first examination of the complaint and the demurrer in this case and of the briefs in support of the same, we felt inclined to sustain the demurrer, but on proceeding to attempt to state our reasons therefor and on a further examination of the authorities we could not overcome the apparent weight of the equities in favor of plaintiff, and this notwithstanding the very strong language used by Mr. Justice Bradley when delivering the opinion of the Supreme Court of the United States in New Orleans v. Gaine's Administrator, 131 U. S. 207 et seq. The questions of law involved are in principle important and as the proofs will necessarily be relatively short, it may be as well to have the whole matter before the Supreme Court of the United States, to which undoubtedly the losing side will take the case. The Court can properly limit the proofs at the trial
16 so as to confine the damages within legitimate bounds.

As stated, the questions of law involved are hard ones. It is not easy to say that the maters involved are not res adjudicas. Neither is it easy to say whether or not the People of Porto Rico can be sued without their consent under circumstances like these, but on the whole we feel that the demurrer ought to be overruled and *and* the proofs taken, and an entry to that effect will be made, but we reserve the right at any time before finally giving the case to the jury, to prevent recovery in case the proofs shall not in fact warrant it, or in case after further examination we shall become convinced either that this demurrer ought to have been sustained or that the suit should have been against the tenants in possession.

(Signed) B. S. RODEY, *Judge.*

Copy of Stipulation Waiving Jury Trial.

(Filed March 16, 1909.)

In the United States District Court for Porto Rico.

Law. # 574.

BARON PIERRE EMMANUEL DU LAURENS D'OISELAY
vs.
THE PEOPLE OF PORTO RICO.

Recovery of Rents and Mesne Profits.

Stipulation Waiving Jury Trial.

It is hereby stipulated and agreed by both parties in the above entitled action, that they waive the right of a trial by jury, and that they submit the case in controversy to the determination of the Court.

San Juan, Porto Rico, March 15th, 1909.

(Signed) HENRY M. HOYT (2d),
Attorney General and Attorney for Defendant, The People of Porto Rico.

(Signed) FEDERICO DEGETAU,
BONIFACIO SANCHEZ,
Attorneys for Plaintiff.

17 *Amended Answer to Complaint.*

(Filed June 10, 1909.)

In the District Court of the United States for Porto Rico.

No. 574.

BARON PIERRE EMMANUEL DU LAURENS DU OISELAY, Plaintiff,
vs.
THE PEOPLE OF PORTO RICO, Defendant.

Recovery of Rents and Mesne Profits.

Amended Answer to Complaint.

The defendant by its attorney, the Acting Attorney General of Porto Rico, amends the answer to the complaint heretofore filed in the above entitled cause.

I.

Defendant denies generally and specifically each and every allegation in the said complaint contained.

II.

Alleges that plaintiff's action has prescribed by virtue of the provisions of Section 1869 of the Civil Code of Porto Rico.

III.

Alleges that plaintiff's action to recover rents and fruits of the property described in the said complaint prior to June 10, 1902, has prescribed by virtue of Section 1863 of the Civil Code of Porto Rico.

IV.

Alleges that the defendant has never been in possession of the property described in the said complaint, and has never collected or received any of the rents or fruits thereof.

V.

Alleges that plaintiff's lessees were in possession of the said property from September 1, 1900, to December, 1905, and that plaintiff has collected and received from the said lessees the fruits and rents of the said property for the said period of time, which rents and fruits he is now seeking in his present action to recover from defendant.

18

VI.

Alleges that plaintiff was not disturbed in the possession of the said property by defendant, but that plaintiff's possession was disturbed and his title disputed by the colonos or occupants of the said property on and before September 4, 1900.

(Signed) J. H. BROWN.
Acting Attorney General of Porto Rico.
Attorney for Defendant.

June 10th, 1909.

Journal Entry (Minute Order.)

(June 10, 1909.)

Law, 574.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY
vs.
THE PEOPLE OF PORTO RICO.

This cause comes on for trial on the merits before the Court alone without the intervention of a jury under a stipulation heretofore filed, and in accordance with the memorandum placed in the files by the Court overruling the demurrer, under date of February 16th last. Messrs. Degetau, Sanchez and Lopez Landrón appear for the plaintiff, and J. Henri Brown, Assistant Attorney General, for the People of Porto Rico.

Before proceeding counsel for the plaintiff requests leave to amend the complaint by striking therefrom the word "mesne" wherever it occurs in the same, and counsel for the defendant not objecting, the request is granted, and the complaint is so considered as amended. Counsel for defendant thereupon moves for judgment on the pleadings, in accordance with his demurrer so as aforesaid heretofore interposed, but the Court, for the reasons stated in the memorandum before referred to, overrules said motion; to which action of the Court in so refusing to enter judgment on the pleadings, the defendant by their said counsel, then and there duly object and except. Whereupon counsel for the respective parties desiring to permit one George Silva, a witness, to stipulate as to what he would testify to, were
19 he sworn in the cause, and dictate such stipulation to the Stenographer as part of the testimony in the case.

The trial is then proceeded with, and plaintiff's case is ended, save that the right is reserved to hereafter introduce a certain return and other papers regarding the placing of the plaintiff in possession of the property for the rents and profits of which this suit is pending, by the Marshal of either the Supreme Court of Porto Rico, of the District Court of San Juan or Aguadilla.

Thereupon the defendant by its said attorney renews its motion for a verdict and judgment on the ground of the insufficiency of the proofs adduced, which motion is for the reasons last aforesaid, also overruled, to which action of the Court the defendant in like manner objects and excepts. The cause not being ended, at the adjournment hour, the same is continued over until tomorrow at 10 o'clock A. M.

Journal Entry (Minute Order.)

(June 11, 1909.)

574. Law.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY,
vs.
THE PEOPLE OF PORTO RICO.

The trial of this cause is proceeded with before the Court alone as on yesterday, counsel being present as before, and the same being ended, defendant by its attorney again renews its motion for a judgment, which, as on yesterday, for the same reasons, is overruled, to which action of the Court said counsel again objects and excepts. Thereupon the Court not being fully advised, grants leave to counsel for the respective parties to file additional memoranda of authorities, if they so desire, on or before the 26th instant.

20 *Journal Entry (Minute Order.)*

(September 7, 1909.)

Law. 574.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY,
vs.
THE PEOPLE OF PORTO RICO.

This cause having been heretofore submitted upon the written stipulation of the parties, and upon oral and written arguments and briefs of counsel, the Court on this day sends to the files an opinion on the merits of the case, and in accordance therewith it is:

Ordered and adjudged that the plaintiff, Pierre Emmanuel Baron du Laurens d'Oiselay, do have and recover of and from the defendant, The People of Porto Rico, the sum of seven thousand and four hundred and fifty dollars ($7,450.00), together with his costs laid out and expended, to be taxed, and to include a stenographer's fee amounting to $45.00 for transcribing the testimony; but as this suit is against the People of Porto Rico, it is further:

Ordered that no execution shall issue hereunder until the further order of the Court, after a showing in that regard, and until the Insular authorities or the Legislative Assembly of Porto Rico shall have had a proper opportunity to pay the same voluntarily. To which action of the Court in refusing to dismiss the cause on demurrer in the first instance, and later in not dismissing said cause on the merits, The People of Porto Rico by their said attorney general then and there duly object and except, and in addition give notice of a motion for a re-hearing of the issues passed upon.

21 *Opinion.*

(Filed Sept. 7, 1909.)

In the District Court of the United States for Porto Rico.

Law. 574.

PIERRE EMMANUEL BARON DE LAURENS D'OISELAY
vs.
THE PEOPLE OF PORTO RICO.

This is an extraordinary sort of a case. It is a suit brought by the plaintiff to recover damages from the People of Porto Rico for having as he claims deprived him of the use of a little over four thousand cuerdas of land of which he was the owner, situated near Lares on this island for a period of about five years from 1900 to 1905. The suit was originally filed in this Court in July, 1908. A demurrer was interposed and at first we felt very much inclined to

sustain it, but finally concluded for the reasons stated in a memorandum sent to the files under date of Feb. 16th, 1909, to take all the proofs, as the parties had stipulated that it should be tried before the Court without a jury, so that we might if possible ascertain the real merits of the case, by having the whole matter before us.

In June, 1909, the trial was had, and the evidence was fully submitted by both sides. Thereafter the case was argued at length orally by counsel for the respective parties and they supplemented this by painstaking written arguments and briefs.

The facts of the case briefly stated are about as follows:

In the year 1900, shortly after American occupation of Porto Rico, one J. H. Hollander, who it appears was at that time the Treasurer of the Island, for some reason or other came to the conclusion that this tract of land out near Lares did not belong to the plaintiff, who claimed to have inherited it from the Duchess of Mahon Crillon of France, and he, the Treasurer, therefore, caused all the tenants living on the land to be so notified, and caused the property to be registered in the Registry of Property as belonging
22 to the People of Porto Rico, and had the tenants at least as to taxes return the same in their own individual names. Naturally the present plaintiff, who as stated at this time had become the owner of the land, protested vigorously against this but without immediate result. However, in a short time he produced such evidences of title to Mr. Hollander, as that the latter wrote him that he had better file a suit against the People of Porto Rico and have the matter judicially determined. The plaintiff did file such a suit in the District Court at San Juan, and it was a most elaborate proceeding wherein the Attorney General of the Island and his Assistants appeared against the plaintiff, but the decision was for the plaintiff. From this decision the Attorney General on the part of the People took an appeal to the Supreme Court of the Island, where the case was again presented and argued at great length, and finally in June, 1904, was again decided in favor of the plaintiff, the Supreme Court affirming the decision of the lower court. See the report of the case in Vol. 2 (Castro) Decisiones de Puerto Rico, p. 103 et seq. where the entire history of the case from the original grant of the land by Charles III of Spain in 1776, to the Duke of Mahon, is fully set forth. The grant was originally of four square leagues, but at the time of this controversy had for one cause or another become reduced to an area of about 4100 cuerdas.

It transpired that from the time Mr. Hollander thus arbitrarily registered the property in the name of the People of Porto Rico, to the time the plaintiff was again put in possession of the land in the latter part of 1905, that all of the tenants refused absolutely to pay the plaintiff any rent and the entire sum was lost to him, save about something over eight hundred pesos which he managed to collect after having been put to a lot of expense in bringing ejectment and other suits against many of the tenants, both before and after the decision in the Supreme Court of the Island.

From all the evidence presented before us, which we have
23 gone over carefully as it has since the time of the trial all been written out from the Stenographer's notes, we find the fact to be, that previous to the action of this Insular official, Mr. Hollander, this property brought a rental revenue varying from three thousand to three thousand five hundred pesos per annum to its owner. We further find from the evidence that the hurricane of 1899 devastated that section of the country so that the land itself was not so easily rented nor was it as productive, nor were the tenants, even had nothing occurred, in a position thereafter to rent land or pay their rent as promptly as they would have done had no such disaster befallen that section of the Island. From all of the evidence we therefore find, that only about 2750 cuerdas of the land was possessed by tenants or could have been rented to or paid for by them during the five years that plaintiff was so out of possession. We further find that the reasonable rental value of this land during that period of time (1900 to 1905), is the sum of sixty cents gold per cuerda, or in all $1,650 per annum, which for the five years would make $8,250, from which is to be deducted about $800 of back rent that it is admitted was collected by the agents of plaintiff after the decision in the Supreme Court, thus reducing his net loss to the sum of $7,450, gold. It is quite apparent that plaintiff sustained much greater loss than this on account of expenses of litigation, travel, counsel fees etc., but as to this no proof was introduced and anyway it perhaps is matter that ought to have been settled in the suits in the Insular courts.

We have devoted a good deal of time to this case because of the very able manner in which it was presented and urged by the learned counsel for the respective parties, but still we have the gravest doubts about the right of plaintiff to recover at all in this or any other court, because his remedy would ordinarily be before the Legislative Assembly. See Langford v. U. S. 101 U. S. 341. We have these doubts for many reasons, among them being, because as we recently held in the case of Elkins v. The People of Porto Rico, the Insular Government cannot be sued without its consent, and because
24 the matter of these damages ought perhaps to have been settled in the suit for the recovery of the land in the Insular District or Supreme Court, and furthermore, because it is unquestioned, we think, from the record, that the island itself never actually received any rent, profit or usufruct from this land or any portion of it. Mechem on Public Officers Sec. 849. See also New Orleans v. Gaines 131 U. S. 191. The injury which the Government unquestionably did to plaintiff, being to deprive him of the right to the use and enjoyment of his property for about five years because of this deliberate but unauthorized registering of the land in the name of the People of Porto Rico, and by such action inducing his tenants to thereafter refrain, desist and refuse as they did, from paying him his usual rentals. Surely this is a wrong for which plaintiff ought to be compensated!

If the plaintiff can legally recover it must be, we submit, under

sub-section 4 of Section 1804 of the Civil code of 1902, which provides that:

"The state is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding section (that is that the party himself must respond) shall be applicable."

It is probably true that even if Mr Hollander was not such a special agent as is contemplated by the section just quoted, still the island as a Government, thoroughly and completely ratified his acts by refusing to restore his land to him and by requesting and obliging him to bring a suit in the District Court to establish his rights, and then, by defending the suit to a final judgment even to the Supreme Court of the Island as vigorously as it did, and hence we think that in all fairness it is too late at this time for the Island to plead or insist on its privilege of exemption from suit. We are also of the belief that under the circumstances the Court ought not to hold that the claim is barred by the one year statute of limitations, and of course no other is applicable to the facts. We are aware
25 that the Supreme Court of Spain, in a sentencia of May 18, 1904, 98 Jurisprudencia Civil 390, held with reference to Section 1903 of the Spanish code which is the same as section 1803 of the Porto Rican code that the responsibility of the State can only occur when a special agent is particularly employed and particularly authorized to do the particular act, and not where he does an act that he is not specially authorized to do while being generally employed as an agent or employé of the Government. This is its language:

"Que la responsibilidada del Estado se limita por el articulo 1903 al caso en que obre por mediacion de un agente especial, y agente especial en el sentido en que se emplean estas palabras es el que recibe un mandato o comision concreta o determinada ajena al ejercicio de su cargo si es funcionario publico para que en representacion del Estado y obligandole como mandatario suyo, cumpla el encargo que se le confie, concepto que no puede alcanzar a un agente ejecutivo que es un empleado de la Administracion activa y que bajo su responsabilidad ejerce las funciones naturales y propias de su cargo, reguladas por la ley y por los reglamentos."

But as stated we are constrained to think that Mr Hollander in fact was a special agent for the purpose at the time, and in any event his action was ratified as pointed out.

In our opinion in the Elkins suit filed simultaneously herewith we pointed out that to render a judgment against the island is one thing, but as to the way it should be collected or satisfied is quite another, and as we are of opinion that providing the means of payment of a judgment in this sort of a case is entirely matter for the Legislature, no execution will be permitted to issue as of course on the judgment we shall authorize. In fact the rendition of any judgment in the cause is in a sense rather advisory to the Legislature than anything else.

It is reasonable to suppose that had this claim been presented to

the Legislative Assembly in the first instance it would have been paid, because the injury to the plaintiff is manifest and he has been guilty of no wrong.

Having read all the exhibits and gone over the record with great care and listened to the testimony presented and the arguments of the learned counsel for the respective sides, we unhesitatingly say that the equities are entirely with the plaintiff, and that the
26 Insular authorities did cause damage to him in at least the sum of $7,450 gold as before stated, and therefore judgment for that amount will be entered with costs, the latter to include the stenographer's fee for transcribing the testimony, but execution therein will be stayed to give the Insular authorities or the Legislative Assembly an opportunity to act in the premises.

(Signed) B. S. RODEY, *Judge.*

Motion for New Trial.

(Filed Sept. 11, 1909.)

In the District Court of the United States for Porto Rico.

Law. 574.

PIERRE EMMANUEL BARON DE LAURENS D'OISELAY
v.
THE PEOPLE OF PORTO RICO.

Motion for New Trial.

Comes now the defendant herein The People of Porto Rico, by its attorney J. Henri Brown, Acting Attorney General for the People of Porto Rico, and moves the Court that the verdict and judgment heretofore rendered in the above entitled action on the seventh day of September, 1909, at San Juan, P. R., be vacated and set aside, and that a new trial be granted to the said defendant on the following grounds:

I.

That there is no evidence to sustain the verdict and judgment.

II.

That said verdict and judgment is contrary to the evidence and to the weight of the evidence.

III.

That said verdict is contrary to law.

IV.

That the Court has no jurisdiction of this defendant,
27 because for all necessary purposes of government it is a sovereign and not liable to suit.

V.

That it appears from the testimony introduced upon the trial that defendant's damage, if any was caused, arose from the act of an official to whom it properly pertained to do the act performed, and not by the defendant acting through a special agent.

VI.

That it appears from the evidence introduced upon the trial that whatever damage, if any was caused, arose from the unauthorized acts of a general agent of defendant, and not through a special agent.

Wherefore, defendant moves this Court to grant a new trial in this cause as above set forth.

Dated at San Juan the eleventh day of September, 1909.

(Signed) J. HENRI BROWN.
Acting Attorney General and Attorney for Defendant.

Service of a copy of this motion accepted this — day of ——, 1909.

———,
Attorney for Defendant.

28 *Journal Entry.*

(November 1, 1909.)

In the District Court of the United States for Porto Rico.

574. Law.

PIERRE EMMANUEL BARON DE LAURENS D'OISELAY
vs.
THE PEOPLE OF PORTO RICO.

The motion for a new trial of this cause comes on to be heard, J. Henri Brown, Acting Attorney General of Porto Rico assisted by W. N. Landers appearing for the motion and Messrs. Degetau, Sanchez and Lopez Landrón against the same. After hearing the argument, the Court announces that the matter will be taken under advisement, and directs that briefs be filed in the premises. The defendant having filed its brief on this date, the plaintiff is given eight days' time in which to file his brief, the defendant to have ten days' time thereafter in which to file a reply brief to the same if it is desired to do so.

Journal Entry.

(February 12, 1910.)

Law. 574.

PIERRE EMMANUEL BARON DE LAURENS D'OISELAY
vs.
THE PEOPLE OF PORTO RICO.

This cause having heretofore been submitted on the issues raised by defendant's motion for a new trial, the Court on this day considering itself fully advised, sends to the files a memorandum giving its reasons for its action and in accordance therewith, it is:

Ordered and Adjudged.—that the said motion for a new trial be and the same hereby is overruled and denied. To which action of the Court in thus denying a new trial, the People of Porto Rico, by their counsel then and there duly object and except.

29 *Opinion Denying Motion for New Trial.*

(Filed February 12, 1910.)

In the District Court of the United States for Porto Rico.

No. 574. Law.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY,
v.
THE PEOPLE OF PORTO RICO.

This cause is before us on a motion for a new trial. The complaint was originally filed on July 23rd, 1908. A demurrer was interposed which we overruled setting forth our views in a memorandum sent to the files under date of February 16, 1909. In June 1909, a trial was had under stipulation before the Court alone without the intervention of a jury and the evidence was presented and fully submitted on both sides. Thereafter the cause was argued at length orally by counsel for the respective parties, and shortly thereafter they supplemented this by painstaking written arguments and briefs. Under date of September 7th, 1909, after having given the evidence and the arguments and briefs as careful consideration as we are capable of, we filed an opinion deciding the cause for the plaintiff but staying the execution until the Insular authorities or the Legislative Assembly might have an opportunity to do something towards paying the claim.

Thereafter on November 1, 1909, the case was again elaborately argued by counsel for the respective parties on defendant's motion for a new trial, and on November 13 and 17, 1909, counsel respectively again filed painstaking briefs and written arguments. Just

before writing this memorandum we spent practically a whole day examining these arguments of counsel. We felt that it was due them to examine the positions they took with the utmost care not only because of the importance of the case, but because of the urgency with which each side presented their views. We make this
30 statement so that counsel on either side may not think we have in any manner considered their efforts lightly, on the contrary, we feel justified in saying that seldom have we seen more painstaking efforts indulged in. However we gave so much attention to the cause and made such a thorough examination of it previous to the filing of our rather lengthy opinion on September 7, 1909, that our understanding of the case is thorough. We therefore must confess that notwithstanding the effort made by counsel for the island in this later brief, we see nothing that induces us to in any manner change our views.

As we stated in our opinion aforesaid, the question of the right of plaintiff to recover at all was not an easy one, and we felt on the whole as though the cause was one, where, did this court have power to do as circuit courts of the United States in the States in some instances have, we would certify the question to the Honorable the Supreme Court of the United States for its views on the legal principles involved. Not being able to do so, and as stated seeing no reason to modify our view of the case on the whole, we are constrained to overrule the motion for a new trial and an order to that effect will be entered.

(Signed) B. S. RODEY, *Judge*.

31 *Journal Entry.*

(April 9, 1910.)

In the District Court of the United States for Porto Rico.

Law. 574.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY,
vs.
THE PEOPLE OF PORTO RICO.

In this cause the matter of fixing the amount of the bond on the writ of error to the Honorable the Supreme Court of the United States comes on to be heard, Harvey M. Hutchinson, of the Office of the Attorney General appearing for the People of Porto Rico and making the application and Messrs. Federico Degetau and Bonifacio Sanchez appearing for the plaintiff. Thereupon said attorney for the People of Porto Rico request- that a reasonable bond for costs only be fixed and that because the People of Porto Rico is the defendant, that the said bond be considered as a supersedeas in the premises and that execution be stayed pending the decision in the Court above. Counsel for the plaintiff object to this and insist that the People of Porto Rico when they consented to be sued as the Court

has held they have done in this cause, shall be subject to the same burden as any other defendant; and the Court having heard counsel for the respective sides in that behalf decides that the application of the defendant should be granted, and a bond is then and there fixed in the sum of Five hundred Dollars and the execution is stayed pending the decision of the cause on the writ of error by the Honorable the Supreme Court of the United States. To which action of the Court the plaintiff by his counsel duly objects and excepts. Said bond to be approved as required by law.

In Re Continuance of Cases.

And now on this 9th day of April, this being the last day of the October, 1909, term of Court in this District, it is:

Ordered that any and all matters not finally determined or settled and rights which should or may be lost by the lapsing of the
32 term, are hereby continued until the next term to all intents and purposes as if the numbers and titles of the same were herein set out.

Whereupon the Court adjourns *sine die*.

(Signed) B. S. RODEY, *Judge*.

Order. (*Wireless.*)

(Filed May 18, 1910.)

"Foster V. Brown, Attorney General:

Though on sea, am still in my district, this directs Clerk Gay to enter order granting extension of time for settling bill of exceptions in Baron d'Oiselay versus People of Porto Rico ninety days or sooner coming of the Judge to Porto Rico.

B. S. RODEY, *Judge*."

I hereby certify that the above is a true copy of a telegram received by wireless this date, addressed to Foster V. Brown.

(Signed) KARL ROHRER, *Commodore U. S. N., Commandant U. S. Naval Station.*

San Juan, P. R., May 18th, 1910.

Journal Entry.

May 18, 1910.

No. 574. Law.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY,
vs.
THE PEOPLE OF PORTO RICO.

In accordance with the foregoing, it is ordered: That the appellants be and they are hereby granted an extension of ninety days'

time in which to present their bill of exceptions in the above entitled cause.

(Signed) B. S. RODEY, *Judge.*

33 In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY, Plaintiff & Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant & Appellant.

To Pierre Emmanuel, Baron de Laurens d'Oiselay, Plaintiff, and Federico Degetau and Bonifacio Sanchez, his attorneys of record:

Notice is hereby given that the proposed bill of exceptions in the above entitled action has been filed with the Clerk of the United States Court for Porto Rico on the 21st day of May, 1910, and that Defendant will within a reasonable time move the approval of the same.

Dated at San Juan, Porto Rico, this 21 day of May, 1910.

FOSTER V. BROWN,
Attorney General of Porto Rico, Attorney for Defendant and Appellant.

I hereby certify that on this 23rd day of May, 1910, I mailed a copy of the foregoing notice to Federico Degetau, addressed to him at San Juan, Porto Rico.

W. N. LANDERS,
Atty. for Deft.

34 *Affidavit of Juan Cordero.*

(Filed May 23, 1910.)

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY, Plaintiff and Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant & Appellant.

UNITED STATES OF AMERICA,
Island of Porto Rico, ss.

Juan Cordero, being first duly sworn on oath, deposes and says: That he is a resident and inhabitant of the Island of Porto Rico, and is employed as a Messenger in the Office of the Attorney General

of Porto Rico, located in the City of San Juan, Porto Rico; that on the 21st day of May, 1910, he was instructed by Mr. W. N. Landers, of the office of the Attorney General, to serve a copy of the attached and foregoing notice upon Federico Degetau, Esq., one of the attorneys for the above named Plaintiff, and secure Mr. Degetau's acknowledgment of the same on the original thereof; that affiant went to the office of Mr. Degetau, in the City of San Juan, Porto Rico, and tendered him a copy of the attached notice and requested the said Mr. Degetau to acknowledge service of the same upon the original thereof; that Mr. Degetau took said copy, read the same, and returned it to affiant with the remark that he was unable to acknowledge service upon the original, as the same was not in time, and refused to accept the same; that affiant thereupon took both the original and copy to the office of the Attorney General and informed Mr. Landers of the above facts, who thereupon prepared this affidavit.

(Signed) JUAN CORDERO.

Subscribed and sworn to before me this 23rd day of May, 1910.

(Signed) JOSE BANAN.
Justice of the Peace.

35 *Acknowledgment of Service of Proposed Bill of Exceptions.*

(Filed May 28, 1910.)

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY, Plaintiff and Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant and Appellant.

I, hereby acknowledge receipt of a copy of the Proposed Bill of Exceptions filed in the above entitled cause on May 23, 1910, in the District Court of the United States for Porto Rico.

San Juan, P. R. May 28, 1910.

(Signed) FEDERICO DEGETAU.
Attorney for Plaintiff.

36 *Motion to Strike Out.*

(Filed May 31, 1910.)

In the United States District Court for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, BARON DE LAURENS D'OISELAY,
vs.
THE PEOPLE OF PORTO RICO.

Motion to Strike Out.

Now comes the plaintiff in the above entitled case, Pierre Emmanuel Baron du Laurens d'Oiselay, and by his attorneys Federico Degetau, Rafael Lopez Landron and Bonifacio Sánchez, moves this Honorable Court to strike from the files of this case an entry made in the journal of the Court dated May 18th, 1910 which reads as follows:

"Foster V. Brown, Attorney General.

"Though on sea, am still in my district this directs Clerk Gay to enter order granting extension of time for settling bill of exceptions in the Baron d'Oiselay versus People of Porto Rico, ninety days or sooner coming of the Judge to Porto Rico." B. S. Rodey, Judge."

The reasons for the filing of this motion are:

1. That said order was given out of court and out of chambers and also without the plaintiff being notified that the defendant was requesting an extension of time to file the bill of exceptions.

2. Because said order was issued without giving your petitioner herein an opportunity to appear in opposition thereof.

3. Because the Judge, in ordering Clerk Gay to enter said order had not at hand the records and papers of the case and could not see the dates and exact status of the matter which could — enabled him to act accordingly neither *he could heard* the plaintiff.

4. Because said order was given after the term in which the case was tried had elapsed and after more than sixty days had passed since the date in which the new trial was denied by the Court, and

5. Because an order extending time to file bill of exceptions cannot be granted by the Judge without notice being given to
37 the other party of the case, and finally.

6. Because a term cannot be extended after the same has expired.

San Juan P. R. May 31st, 1910.

(Signed) FEDERICO DEGETAU,
RAFL. LOPEZ LANDRON,
BONIFACIO SANCHEZ.
Attorneys for Plaintiff.

Received copy of the preceding motion, this — day of ——, 1910.

——— ———,
Attorney General of Porto Rico
and Attorney for Defendant.

38 *Notice of Settlement of Bill of Exceptions.*

(Filed June 7, 1910.)

In the District Court of the United States for Porto Rico.

No. 574. Law.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff & Appellee,
v.
THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Notice of Settlement of Bill of Exceptions.

To Pierre Emmanuel, Baron de Laurens d'Oiselay, Plaintiff and Federico Degetau and Bonifacio Sanchez, His Attorneys of Record:

You and each of you will please take notice and are hereby notified that the above named defendant and appellant, The People of Porto Rico, will, on the 9th day of June 1910, at the hour of two o'clock p. m. or as soon thereafter as counsel can be heard, in the court room of the District Court of the United States for Porto Rico, located in the City of San Juan, Porto Rico, move the court for an order settling and signing the proposed Bill of Exceptions, heretofore tendered to the Clerk of the above entitled court on May 23, 1910.

Dated at San Juan, P. R. this 7th day of June, 1910.

(Signed) FOSTER V. BROWN.
Attorney General of Porto Rico,
Attorney for Defendant and Appellant.

Due and legal service of the foregoing notice is hereby accepted this 7th day of June, 1910.

(Signed) FEDERICO DEGETAU.
BONIFACIO SANCHEZ.
Attorney for Plaintiff and Appellee.

39 *Journal Entry. June* 10. 1910.

In the District Court of the United States for Porto Rico.

574. Law.

PIERRE EMMANUEL, Baron du Laurens d'Oiselay,
vs.
THE PEOPLE OF PORTO RICO.

This matter is before the Court for a hearing on plaintiff's motion to strike from the files and the record the order (wireless) of May 18th, 1910, wherein the Court grants appellants ninety days' extension of time in which to present for signature and settlement their Bill of Exceptions. Messrs. Degetau and Sanchez and Rafael López Landrón appear in support of the motion and Foster V. Brown, Attorney General of Porto Rico assisted by W. N. Landers in opposition thereto. At the conclusion of the arguments, the Court takes the matter under advisement with leave to counsel to forthwith file such memoranda of authorities as they may desire. The Court thereupon announces that it will render a decision as to the matter in issue in the premises at 10 o'clock A. M., on Monday the 13th instant.

Journal Entry June 13, 1910.

574. Law.

PIERRE EMMANUEL, du Laurens d'Oiselay,
vs.
THE PEOPLE OF PORTO RICO.

Now on this day the present incumbent of this bench having been absent from Porto Rico since the 18th ultimo until the 9th instant does in open Court as to the issues herein pending read from the bench a memorandum giving his views and reasons for his action, which is sent to the files, and in accordance therewith the motion to strike the aerogram order entered herein under date the 18th of May, extending the time within which to file a Bill of Exceptions is denied, to which action of the court the plaintiff by his attorneys Messrs. Degetau & Sanchez then and there duly object and except.

And thereupon in accordance with a written motion of
40 Foster V. Brown attorney General of Porto Rico, made on behalf of the defendant, an order Nunc pro tunc as of date April 9th, 1910, is granted extending defendant's time in which to make, file and serve a Bill of Exceptions in this cause to June 13th, 1910, and is entered as follows:

Order.

Upon motion of Foster V. Brown, Attorney General of Porto Rico and attorney for the above named Defendant and Appellant, for an order nunc pro tunc as of April 9th 1910, extending Defendant and Appellant's time in which to make, file and serve a bill of exceptions in the above entitled cause until June 13th, 1910, and the Court being fully advised in the premises.

It is hereby ordered that an order nunc pro tunc as of April 9, 1910, be and it is hereby considered as entered upon the minutes of this Court extending Defendant and Appellant's time in which to make, file and serve a bill of exceptions in the above entitled cause until June 13th, 1910.

Done in open Court the 13th day of June, 1910.

(Signed) B. S. RODEY,
Judge District Court of the United States for Porto Rico.

And thereupon said counsel presents a petition for an appeal to the Honorable the Supreme Court of the United States which is in like manner sent to the files and the same is granted by the following order:

Order.

In this case, on motion of Foster V. Brown, Attorney General of Porto Rico and counsel for defendant, it is ordered that an appeal to the Supreme Court of the United States from the final judgment heretofore filed and entered herein on the 7th day of September, 1909, be, and the same is hereby allowed, and that a certified transcript of the record, papers and all proceedings be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars ($500.00) Dollars, the same to act
11 as a supersedeas bond and also a bond for costs on appeal.

Dated this 13th day of June, 1910.

(Signed) B. S. RODEY,
District Judge.

And thereafter the defendant by its said counsel, presents a certified check for the sum of $500, and requests that the same be received as and for a supersedeas bond in the premises which request then and there is granted by the following order:

Order.

The Clerk of the above entitled Court is hereby ordered, authorized and directed to accept from the above named defendant and appellant, The People of Porto Rico, a certified check of the Treasurer of Porto Rico, in the sum of $500.00, to remain in the custody

of the Clerk of this court to be deposited in the registry bank account, the same to act as a supersedeas bond and also a bond for costs on appeal in the above entitled cause.

Done in open court this 13th day of June, 1910.

(Signed) B. S. RODEY,
District Judge of the United States for Porto Rico.

The counsel then presents a citation on appeal in the usual form with service thereof acknowledged by opposing counsel, and the same is also sent to the files. He then presents an assignment of alleged errors of the court which is also received and ordered to the files.

Thereupon he presents a transcript of the entire testimony taken and transcribed in the cause, together with the objections and exceptions taken thereto during the trial, as a Bill of Exceptions in the premises, which after the same has been submitted to opposing counsel is over their objection duly settled and signed on this date Nunc pro tunc as of date April 9th, 1910, and is in like manner sent to the files.

To which action of the court in thus granting said appeal and in thus approving said bond and issuing said Citation and approving, settling and signing said Bill of Exceptions the plaintiff by his attorneys, Degetau and Sanchez, then and there duly object
42 and except; and then and there dictate to the stenographer in part their additional reasons as follows:

They object and except first to the entering of all these orders nunc pro tunc as of a date within the term; and second, because the bill of exceptions as presented contains a transcript of the entire evidence which contains much immaterial matter, with the objections and exceptions thereto, when a much smaller record would do.

43

Opinion.

(Filed June 13, 1910.)

In the District Court of the United States for Porto Rico.

PIERRE EMMANUEL BARON LAURENS D'OISELAY, Plaintiff,
vs.
THE PEOPLE OF PORTO RICO.

This matter is before us on a motion of counsel for plaintiff filed May 21, 1910, to strike from the files an order entered herein on May 18th granting an extension of time of ninety days, or the sooner coming of the Judge to Porto Rico, for settling a bill of exceptions. A hearing was had on Saturday, the 11th of June instant and the matter taken under advisement until today.

The situation is a peculiar one. Under date of February 16, 1909, we filed a memorandum of our views overruling a demurrer to

the complaint. As stated in that memorandum, we had at such time grave doubt as to the right of the plaintiff to recover in the cause. Later, under date of September 7, 1909, after a trial on the merits had been had, we filed a somewhat elaborate opinion, and still on the whole case held that the plaintiff had a right to recover, and under that opinion we entered a judgment in his favor for the sum of $7,450.00 and a stenographer's fee for the transcript, but stayed execution until the court's further order and until the insular authorities or the legislative assembly should have an opportunity to act in the premises. Still later a motion for a new trial was filed and elaborately argued, and thereafter briefs on both sides were presented, but we still held to our view that on the whole case the plaintiff was entitled to recover, and under date of February 12th sent an opinion to the files giving our reasons for this view and overruling the motion for a new trial, to which action the defendant by its counsel entered a proper objection and exception.

44 The matter remained in this condition until the 9th day of April, 1910, which was the last legal working day of the October, 1909, term of the court, and on which day counsel for the respective parties appeared, and, after considerable argument in that behalf and for the sole reason that the People of Porto Rico were the defendants and their counsel promised that the judgment would be immediately paid in case the cause was affirmed above, a supersedeas bond was fixed in the low sum of $500.00 and execution was stayed pending the decision of the cause on the merits by the Honorable the Supreme Court of the United States. The entry of this proceeding was the last entry of the term save one, which was a general entry made to protect and preserve every right possessed by any litigant, that might lapse because of the ending of the term, and it was as follows: "In Re Continuance of Cases. And now on this 9th day of April, this being the last day of the October, 1909, term of court in this district, it is

Ordered that any and all cases not finally determined or settled and rights which should or may be lost by the lapsing of the term, are hereby continued until the next term to all intents and purposes as if the numbers and titles of the same were herein set out. Whereupon court adjourned sine die."

It transpires that although counsel for the defendant had prepared a writ of error and citation, he omitted to file the same before asking for the fixing of the supersedeas bond as aforesaid, although it was understood at the time of the fixing of the supersedeas bond that a writ of error and citation had been or was to be filed and issued in proper form because otherwise the Court would not have fixed a supersedeas bond at all. It transpired that the present incumbent of this bench, having obtained leave of absence for the balance of his official term, left the Island on the afternoon of May 18, 1910, and when out in the ocean received a wireless dispatch requesting that the time for the settling of the bill of exceptions in this cause be extended. It was not certain at the

45 time whether the Court was within the three mile ocean limit bounding the District of Porto Rico, but we assumed that we

were within it and sent back an order by aerogram the hour of receipt of which can be certified by the wireless operator at the land station granting additional time as first above set out.

Under date of May 23rd, counsel for defendant presented and tendered to the clerk a bill of exceptions in the premises and cited the opposing counsel to appear against an order that the same be settled on the 9th of June instant. We returned to the Island on the latter date in response to a request of the Bureau of Insular Affairs made to the Department of Justice at Washington, and on the parties appearing before us we set the matter for Saturday, the 11th instant, when a full hearing was had and the matter taken under advisement until today as aforesaid.

It is unquestionably the general rule that a bill of exceptions must be settled and signed within the term at which the decision became final, and counsel for the plaintiff here has cited us to a long line of well known authorities fully establishing that general rule. It is also equally certain that there are well defined exceptions to this rule and the best statement of such an exception is set forth in Koewing v. Wilder, 126 Fed. 472, which states that "This rule does not apply w-ere a further time has been allowed by an order entered during the term or where extraordinary circumstances exist." It is also well established that Sec. 914 R. S. U. S. does not require a federal court to conform to state practice regarding writs of error or appeals. See citations in 4 Fed. Stats. Ann. 576.

Several of the authorities cited and which we have not time here to review at length, show it to be the modern rule that courts have power to exercise a sound discretion regarding writs of error and the settling of bills of exceptions where extraordinary circumstances exist and where the application is made within the time limited by national law for the filing of the writ without reference to supersedeas.

46 It is strenuously contended by counsel for plaintiff here that no writ of error having been filed during the term, the right of the Court to permit one to be filed now has terminated. We fully appreciate the weight that ought to be given to this statement, and ordinarily it is entitled to the gravest consideration, but on the very last day of the term a supersedeas bond was fixed as aforesaid under the understanding in the mind of the Court at least that a writ of error had in fact been filed, otherwise the work then being done would have been meaningless. Moreover, the very next entry in the journal of that day continued all matters for all purposes where any rights might be lost, and, while this would not have any effect on this particular case if it in fact was dead after such date, still we think it was not dead or terminated because of the fixing of the bond and the understanding aforesaid.

Therefore we feel that the motion to strike the aerogram order from the files should be denied and that the Court should grant defendant every right required in the way of the entry of orders nunc pro tunc to enable it to have the Honorable the Supreme Court of the United States pass upon the merits of this case, in accordance with our statement at the beginning that we would certainly have certified

the issue there had we the power. This is all the more necessary because the People of Porto Rico are the defendants and it would be difficult here to issue an execution, and because the judgment will unquestionably be paid immediately if the cause is affirmed, and, if it is not affirmed, then this plaintiff is not entitled in law at least to it, nor would it be right for this court by its order to force the payment of it.

Therefore proper orders will be immediately prepared and entered denying the motion to strike, and a further order or orders as may be necessary will be prepared and entered to have effect nunc pro tunc as of a date to give it legal effect within the proper time during the October, 1909, Term, permitting the writ of error and citation to be filed and issued and granting the same, and the bill of
47 exceptions as presented will be considered as settled and signed, at a like proper date approving and settling the bill of exceptions as presented and approving the supersedeas bond, and all of which must be prepared and presented for settlement and entry on this day.

(Signed) B. S. RODEY, *Judge*.

48 *Copy of Motion Nunc Pro Tunc.*

Filed June 13, 1910.

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff & Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant & Appellant.

Motion for an Order Nunc Pro Tunc.

Comes now Foster V. Brown, Attorney-General of Porto Rico, and Attorney for the above named Defendant and Appellant, and moves this Honorable Court for an order nunc pro tunc as of April 9, 1910, extending Defendant's time in which to make, file and serve a bill of exceptions in the above-entitled cause until June 13th, 1910.

Said Motion is based upon the records, papers and proceedings in the above-entitled action.

Dated at San Juan, Porto Rico, June 13th, 1910.

(Signed) FOSTER V. BROWN,
By WM. L.,
Attorney General for Porto Rico,
Attorney for Defendant and Appellant.

49 *Copy of Order Nunc Pro Tunc.*

Filed June 13, 1910.

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff & Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant & Appellant.

Order.

Upon motion of Foster V. Brown, Attorney General of Porto Rico and attorney for the above-named Defendant and Appellant, for an order nunc pro tunc as of April 9, 1910, extending Defendant and Appellant's time in which to make, file and serve a bill of exceptions in the above entitled cause until June 13th, 1910, and the Court being fully advised in the premises,

It is hereby ordered that an order nunc pro tunc as of April 9, 1910, be and it is hereby considered as entered upon the minutes of this Court extending Defendant and Appellant's time in which to make, file and serve a bill of exceptions in the above entitled cause until June 13th, 1910.

Done in open Court this 13th day of June, 1910.

(Signed) B. S. RODEY.
Judge District Court of the United States for Porto Rico.

50 *Bill of Exceptions.*

Tendered May 23, 1910.

(Filed June 13, 1910.)

Nunc Pro Tunc as of April 9th, 1910.

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff & Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant & Appellant.

Bill of Exceptions.

Be it remembered that on the 10th day of June, 1909, at the April, 1909, Term of this Court, the above entitled cause came on to be

heard before the above Court, a trial by jury having been duly and regularly waived.

Honorable Bernard S. Rodey, Presiding.

The Plaintiff appeared by Messrs. Degetau, Sanchez and Landron, his counsel, and the Defendant appeared by J. Henri Brown, Assistant and Acting Attorney-General of Porto Rico, its counsel.

The hereinafter transcript, which is made a part of this bill of exceptions, constitutes the testimony and statements of all the evidence introduced and offered upon the trial of this cause, with the rulings and exceptions thereto.

51 In the District Court of the United States for Porto Rico.

BARON LAURENS D'OISELAY
versus
THE PEOPLE OF PORTO RICO.

Transcript of Testimony.

Index of Witnesses.

Name.	By whom called.	From page	to page in record
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Coll, Miguel	Plaintiff	77	14
Coll, Miguel	Defendant	72	77
Escudero, Modesto	Plaintiff	33	36
Gonzales Mercado, Juan	Defendant	41	56
Gutierrez, Francisco	"	65	67
Lopez Landron, Rafael	Plaintiff	37	39
Mazaredo, Emilio de	"	15	32
Meade, Chas	Defendant	77	80
Yturregui, Nicolas	Plaintiff	39	40
Yturregui, Nicolas	Defendant	57	59

52 In the District Court of the United States for Porto Rico.

BARON LAURENS D'OISELAY
vs.
THE PEOPLE OF PORTO RICO.

Transcript of Testimony.

Mr. Degetau asks leave to amend the complaint, leaving out the words, 'mesne profits' in the last paragraph of the complaint and in the prayer.

The COURT: Is there any objection to the amendment?

Mr. BROWN: We have no objection. I understand that the object of the amendment is to strike out the words, 'rents and profits' in the complaint on the ground that they are not now asking for them.

Mr. DEGETAU: Yes, that is the purpose.

Mr. BROWN: Before entering upon the trial of this case, I want to present a motion for judgment upon the pleadings.

The COURT: Let it be noted. It is denied for the reasons set forth in the memorandum filed February 16, 1909.

Mr. BROWN: Your Honor will allow an exception.

The COURT: And to which action of the Court, the Island by its Attorney General then and there duly excepts.

Now, before proceeding with the hearing of the proofs, counsel for the respective parties, J. Henri Brown, Assistant Attorney General, for the Island, and Messrs. Degetau, Sanchez and Landron for the plaintiff, stipulate as follows:

53 It is understood that Jorge Silva, a witness who is present, but who has to go away, would testify that he is the agent or representative of the plaintiff and that he has rented the whole tract that is the subject of this suit, on behalf of his principal, to one Jose Collazo for the sum of $1,100.00 per year, the plaintiff to pay taxes.

Mr. DEGETAU: We offer a translation of the decision of the supreme court, in which the property was returned to plaintiff in virtue of a suit for the recovery of it, which he brought.

The COURT: Have you any objection to the introduction of the translation of the decision of the supreme court of the Island, Mr. Brown?

Mr. BROWN: If I understand counsel's object in presenting this translation or copy of the decision of the supreme court of Porto Rico, it is to establish that the title was adjudicated to him on a certain date.

The COURT: I assume that is the object.

Mr. DEGETAU: Among other things that is the object, and as it has been objected by the other side that the matter has been adjudicated, it is also offered to show what matters have been adjudicated.

Mr. BROWN: I presume this is admissible, but I contend that this record is not binding upon the defendant in this case because the parties were not the same.

Mr. DEGETAU: The case was between the People of Porto Rico on one side and the Baron Laurens d'Oiselay on the other.

54 The COURT: You have the objection, Mr. Harvey. Let it be noted. The objection is overruled at this time, but still all the proofs at this time are received subject to the Court's statement at the time it overruled the demurrer.

Mr. BROWN: We object on the ground that the parties in this case which he is now citing, were the Baron Laurens, the present plaintiff, and the Treasurer of Porto Rico, and not the People of Porto Rico. I want to call the attention of the Court to the fact that the parties were erroniously stated in the opinion by the supreme court. The papers in the case on appeal are here. They are stated two ways. First they say it is between the present plaintiff and the Treasurer of Porto Rico, and I contend that the suit as originally

filed in district court was against the Treasurer of Porto Rico. Those papers were never changed, and while the Supreme Court refers to the matter under two titles, the true one should have been as against the Treasurer of Porto Rico and not as against the People of Porto Rico.

Mr. DEGETAU: The title of the case as it appears in the records of the supreme court is by the Baron against the People of Porto Rico.

Mr. BROWN: Your Honor will give me an exception?

The COURT: Yes.

55 The document in question was then placed in evidence and marked: Exhibit A for the plaintiff.

Mr. DEGETAU: The next document is a certificate by the Secretary of Porto Rico in regard to the taxes paid by the Baron Laurens d'Oiselay the last year before the Baron was dispossessed by the People of Porto Rico, expressing the rents on which the taxes were imposed.

The COURT: Any objection to that?

Mr. BROWN: No objection to this.

The document in question was then placed in evidence and marked: Exhibit B for the plaintiff.

Mr. DEGETAU: Next is a letter and certificate of the Treasurer of Porto Rico embodying the communication in which he dispossessed your plaintiff of the ownership of the land, giving orders for the inscription in the name of the People of Porto Rico in order to have the colonists have their documents sent to the Treasurer of Porto Rico.

Mr. BROWN: I object to the admission of this in evidence on the ground that this is not binding upon the defendant in this case.

Mr. DEGETAU: I have to insist on the admission of this document as an essential element for the statement of the facts, on the ground that this has been already admitted in the translation of the documents that accompany the decision of the supreme court of the Island.

The COURT: The Court will receive it subject to the general
56 argument of the case and subject to your objection, and you may have an exception on it, Mr. Brown.

The document in question was then placed in evidence and marked: Exhibit C for the plaintiff.

Mr. DEGETAU: The next document is a letter from Treasurer to the plaintiff that forms also a part of the record in the supreme court and which is essential to a knowledge of the facts, because it is the letter directing the plaintiff to discuss the title in the courts of justice; the title over his lands.

Mr. BROWN: If Your Honor please, I object to the admission of this letter in evidence upon the grounds:

First. That it purports to decide a question not within the jurisdiction of the officer, the then Treasurer of Porto Rico, to determine, and because his decision could not be binding upon the defendant in this case or conclusive upon the defendant, and

Second. Because it contains what appears to be an admission and which would not be conclusive against the defendant in this case.

The COURT: Overruled and the paper received under the same general statement.

Mr. BROWN: Save an exception.

The document in question was then placed in evidence and marked: Exhibit D for the plaintiff.

Mr. DEGETAU: The next document is a certificate of the secretary of the municipal court of Lares, in which reference is made to the documents and communications to the Treasurer, in which
57 the order was given to notify *to* the colonists that the People of Porto Rico were the owners and that the Baron was no longer the owner.

The COURT: Well, if you are right at all, that is altogether essential I think. What do you say, Mr. Brown?

Mr. BROWN: It is objected to on the ground that it is irrelevant and immaterial.

The COURT: Overruled and received the same as the other papers.

The document in question was then placed in evidence and marked: Exhibit E for the plaintiff.

Mr. DEGETAU: We are going to prove our claim, but in the answer it appears that there are some small amounts of this claim that were received by the Baron and we are ready to admit any of these amounts that may appear as received by us.

The COURT: In other words, you are ready to admit wherever you did receive money, that it ought to be in deduction of your whole claim?

Mr. DEGETAU: Yes, Your Honor.

MIGUEL COLL being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination by Mr. LANDRON:

Interpreted.

Q. What is your name?

A. Miguel Coll.

Q. Have you had occasion to know the lands or property of the Baron Laurens d'Oiselay?

A. Yes, sir.

Q. On what occasion?

58 A. Because I was attorney in fact for the Duchess for eighteen or twenty years.

Q. Do you know how much this property could rent for?

Mr. BROWN: I object to this question.

The COURT: He has qualified himself.

Mr. BROWN: Yes, but he hasn't limited it in point of time and we don't know whether it was in the sixth century or the tenth century or at the present time.

The COURT: What years is it alleged in the complaint that this property was in the possession of the People of Porto Rico?

Mr. DEGETAU: From the fourth of September, 1900, to December, 1905.

The COURT: Put your question that way, Mr. Landron.

The COURT: Ask the witness to state whether or not he knows what was the rental value of the property of this Baron from the year 1900 to 1905; that is, if you know.

A. At that time I was not her attorney in fact.

Q. Did you live in that vicinity?

A. Yes, sir.

Mr. LANDRON:

Q. Then why didn't you know its rental value?

A. I didn't know what in fact it produced. I can only ascertain about the time I was her attorney in fact.

Q. When did your administration of the Baron's estate end?

A. In the year '99 on account of the death of the Duchess.

The COURT:

Q. You had been eighteen years administrator for this lady up to that time; up to 1899?

A. Yes, sir.

59 Q. Managing that particular estate out there, that is in question here?

A. Yes.

The COURT: I will hold that man qualified to answer as to its rental value in a general way. Of course if there is any material change, it is matter of defense to show.

Mr. LANDRON:

Q. Until the year 1899 what was the average income from that property?

A. About 3,500 or 4,000 provincial pesos.

The COURT:

Q. Per annum, was it?

A. Yes, sir; per annum.

Q. Ask him if conditions from 1900 to 1905,—he lived right there in that same community—if conditions and rentals were the same as they had been before, that is, from 1900 to 1905, in that locality. Were conditions around there just the same or was that land worth any more or any less during those years?

A. No, sir; I don't think it has increased in value.

Mr. DEGETAU:

Q. Did the witness have any charge in the community that permitted him to know about conditions there during that time?

A. Yes, sir; I was the mayor of the town for seven years.

Mr. DEGETAU: Nothing more.

Cross-examination by Mr. BROWN:

Q. During what time was the witness mayor?

A. Early in 1891 up to 1897 and 1898, about seven years, not complete.

Q. You say that there was no change in rental values of property of this character in Lares from 1899 to 1905?

60 A. Perhaps they decreased in value rather than increased.

Q. Isn't it a fact that because of the cyclone in 1899, property values all throughout that section suffered severe damage in rental values?

A. Yes, sir.

Mr. DEGETAU: I object as far as it is the value of the property. During the cyclone the coffee properties suffered but the pastures improved. The property is not particularly a coffee plantation but in great part is a pasture plantation.

Q. Isn't it a fact, Mr. Coll, that in consequence of the cyclone, the whole section of Lares was impoverished?

A. Yes, sir.

Q. That nobody had money or that there was very little money in circulation?

A. That is right.

Q. Isn't it true that it was very difficult to rent lands of any character?

A. Yes, sir.

Q. What is the principal agricultural product of Lares?

A. Coffee.

Q. Isn't it true that the coffee plantations were virtually destroyed by the cyclone of 1899?

A. Yes, sir.

Q. And isn't it true, Mr. Coll, that the whole section, all kinds of agriculture suffered as a consequence of this damage to coffee by the cyclone?

A. Yes, sir.

Q. Now, Mr. Coll, you were administrator of this property for eighteen years you say?

61 A. Yes, sir; about that time.

Q. And you state that the average annual income was between 3,500 and 4,000 pesos provinciales.

A. Yes, sir.

Q. How many acres are there in this property?

A. 4132.

Q. How many acres did you have rented at any one time during that period?

A. Sometimes it increased and sometimes decreased. It was not rented all the time.

Q. Did you ever have the whole property rented?

A. No, sir; not all.

The COURT:

Q. Well, did you get this income that you tell about, from it anyway whether you had the whole rented or not?

A. I have said about $3500.00. In making that estimate I did not include the whole property because there are 4,132 cuerdas.

Mr. BROWN:

Q. What was the highest price rental per acre that you got during your administratorship for any part of this property?

A. One provincial peso per cuerda.

Q. That is to say, about sixty cents of the present money?

A. Yes, sir.

Q. Who succeeded you as administrator?

A. I ceased on account of her death.

Q. During the time that you were administrator or during the latter part of this time, isn't it true that there were claims made by some of the tenants that they owned the property and refused to pay rents?

62 A. Not during my time; sometimes we had to file complaints against some of them but they did not deny that. After it passed to the Baron, something of that kind happened.

Q. Did you cease as administrator before or after the cyclone?

A. During those days.

Q. To what purpose was this property devoted during your administratorship?

A. Coffee, pasture and brier and minor products.

Q. How many acres were in coffee?

Mr. DEGETAU: I object because that certificate which we have introduced, shows the number of each.

Mr. BROWN: I am testing the witness' credibility and knowledge.

Mr. DEGETAU: I withdraw the objection.

Q. How many acres of this property were in coffee?

A. I can't state that; I can't tell the number.

The COURT:

Q. Can't you give us an approximate idea; was it a quarter of the land or some other fraction?

A. There were small patches and I estimate that in the whole property there were about one hundred cuerdas devoted to coffee in small patches.

Mr. BROWN:

Q. That coffee was destroyed by the cyclone was it not?

A. The greater majority, the greater part.

Q. How did the tenants pay you; in money or in the fruit or products?

A. In money.

Q. Haven't you the accounts for one year, say for the year 1899, to show exactly what was received during that year?

A. No, sir, I turned over everything.

63 Q. So when you said that it produced between 3,500 and 4,000 pesos in money, that is your recollection of what it produced?

A. That is it.

Q. Some years was it less than 3,000 provincial pesos?

A. It might be so but a small amount less, a little less.

Mr. BROWN: That is all.

Redirect examination by Mr. LANDRON:

Q. (Handing a paper to the witness.) Do you know this document?
A. Yes sir.
Q. Explain to the Court what this is. Is that genuine?
A. Yes, sir.
The COURT: He hasn't told us what it is yet. Tell us what it is.
A. This document represents the last current account turned over or delivered to the Baron after the death of the Duchess.
Q. By himself?
A. By me.

Mr. LANDRON:

Q. Who signed it?
A. I signed it.
Q. Is that your signature at the end there?
A. Yes, sir.
Q. What rent did that property produce in the year 1899?
A. $3385.63.
Q. Pesos?
A. Yes, sir; that is dated June, 1899, when I turned over the property.

Mr. LANDRON: We offer the document in evidence.
There being no objection interposed to the admission of same, it is placed in evidence and marked: Exhibit F for the plaintiff

64 Q. Did you assist the Baron, or visit the defendant or its official asking for something in relation to this claim?

Mr. BROWN: I object to that question. That is not redirect examination.
Mr. LANDRON: I merely asked the question to show that he received the Baron when he came there and assisted him in his claim. I withdraw the question since the other side objects.
Witness retires.

EMILIO DENASAREDO being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination by Mr. LANDRON:

Q. What is your name?
A. Emilio Denasaredo.
Q. Is the witness acquainted with the property of the Baron Laurens d'Oiselay at Lares?
A. Yes, sir.
Q. Are you familiar prefectly well with the finca?
A. Yes, sir.
Q. Do you know what it produces or what it has been producing?
A. That property is composed of 1.132 cuerdas.

Mr. BROWN: I beg to ask that the witness answer yes or no and I want the opportunity to object until the time is fixed.

The witness is so directed by the Court.

A. I was going to state that that property being composed of 4.132 cuerdas, the whole property was rented at the rate of one
65 dollar per cuerda irrespective of the part of the property they rented during the time of the provincial money.

Mr. BROWN: The witness has not stated the time he is speaking about.

The COURT: They will bring that out.

Q. Does the witness know the class of products of that property?

A. That property is generally devoted to minor products and a certain area to coffee.

Q. Do you know who possessed that property from 1900 to 1905?

Mr. BROWN: I object to that question. That is purely secondary evidence. He can't prove by this witness ownership of property.

The COURT: He didn't ask him about ownership, but possession.

The question was read by the Stenographer for the information of the Court and counsel.

The COURT:

Q. Who was there on the ground in possession of it during those five years?

A. The people of Porto Rico seized that property.

Mr. BROWN: Now I ask that that answer be stricken out.

The COURT: It is stricken.

The COURT: Tell him to answer who was there on the ground in possession during those five years?

A. The colonos.

Mr. LANDRON:

Q. On account of whom?

A. When the People of Porto Rico were there, on account of the People of Porto Rico. That is what they said, because the Baron had already been deprived of the property.

Q. From what date up to what time were the colonos on that property in the name of the People of Porto Rico, if you know?

66 A. I can't tell that exactly but that must appear in some documents because the People of Porto Rico took possession, and also because some proceedings were instituted afterwards against the People of Porto Rico which were decided in favor of the Baron, and then his attorney in fact Don Alberto de Baroncelli was the one who remained there as the representative of the Baron, and I think that was in the year 1905, although I am not sure.

Q. Do you remember the time when this property was returned to the representative of the Baron?

A. Legally it was returned in the year 1905; I cannot tell exactly.

Q. Did they take any steps to make a formal delivery to the representative of the Baron?

Mr. BROWN: I object to that question. Did who take any steps?

The COURT: Yes, did who take any steps?

Q. Who took any steps to make the delivery of the property to the Baron?

A. In the first place Mr. Alberto de Baroncelli took steps to take possession in the name of the Baron so as to be able to make contracts with the colones, and he could not obtain that they would submit to him.

Q. Why didn't he obtain their submission?

A. On account of the resistance which they offered, stating that they did not recognize him as the owner; that the only owner which they recognized there was the government.

Q. What government?

67 A. The People of Porto Rico.

Q. Do you remember if the judicial authorities had to interfere in order to give full possession of the property to the baron?

A. Yes, sir; I was going to state that Mr. Baroncelli had to leave the Island early in the year 1906 or '5, I believe. I don't remember the dates. When he left the Island he appointed an attorney in fact for the Baron because he was empowered to do so, by the Baron, to Don Nicolas Yturregui whom I helped as a friend in the steps in the proceedings.

Q. What proceedings were instituted to that effect?

A. We started to make contracts with them and they refused, saying no, and they refused, not acknowledging the authority of the new attorney in fact.

Q. What authority did they recognize at the time?

Mr. BROWN: Now, if Your Honor please, I object to this question and this line of questioning on the ground that the statements of some colonists, or what he may have heard from people down there, is not evidence against the defendant in this case.

The COURT: He can state what they said, but whether it would bind this defendant is a question of law that the Court will thoroughly take into consideration when it passes upon that question.

The last question was read by the Stenographer for the information of the Court:

The COURT: Repeat that question to him and tell him to just state what they said.

68 A. That they did not recognize the authority of the Baron owing to the fact that he had been dispossessed by the People of Porto Rico.

Mr. LANDRON:

Q. Do you remember if any judicial official went there to oblige them to recognize the Baron?

A. Yes, sir; I was going to reply to that in connection with the other question but I was interrupted. Later on, having failed to obtain this, there was asked of the Court an order to give possession to the representative of the Baron and that order was secured, the court having delegated the deputy marshal of Lares, Don Tomas Cepedas. Then Mr. Baroncelli together with the marshal, went. Mr. Baroncelli was the attorney in fact, and accompanied by counsel

or attorney Rafael Lopez Landron and myself, during several days we went over the property and all the people whom we met, not only in the houses but in the different trails, we stated that the owner was the Baron d'Oiselay and in his representation his general attorney in fact Don Nicolas Yturregui.

Q. Do you know if anything could be collected on account of the old contracts of the Baron?

A. On one occasion when Mr. Yturregui accompanied by the judicial authorities had taken possession of the lands in the name of the Baron, he began to take steps trying to convince the colonos to recognize the authority of the Baron.

Mr. Brown: If Your Honor please, it doesn't appear when these steps were taken with reference to the time for which the plaintiff is seeking to recover in this suit. I don't know whether it was before or afterwards.

The Court: Yes, we have got to fix that.

The Court:

Q. What years are you referring to now, Mr. Witness?

A. The year when Mr. Yturregui took possession.

69 Q. What was it about?

A. I think that Mr. Yturregui took possession in the year 1905, and those steps or proceedings I think took place and the act of possession I think happened during the first months of the year 1906.

Mr. Brown: I object to this question and ask that the last answers of the witness be stricken from the record because they appear to refer to the latter part of 1905 and the beginning of 1906. The plaintiff has introduced in evidence a judgment of the supreme court of Porto Rico of July 1904, if I am not mistaken, determining and putting in possession of his property this plaintiff, and I object to any testimony with reference to what may have occurred between this plaintiff and other persons after the date when this sentence was sent back to the district court, as incompetent and irrelevant in this case.

Mr. Degetau: We are suing for the fruits produced or that might have been produced during the period in which the Baron was dispossessed, and we are proving by this witness and by this question the fact of his being put in possession again.

The Court: I will receive that.

Mr. Brown: Will Your Honor give me an exception?

The Court: Yes.

Mr. Landron: In order to clear up and complete the testimony of the witness, I submit in evidence the power of attorney exe-

70 cuted by Don Alberto Baroncelli on the 21st day of February, 1905.

The Court: The object is to fix a date?

Mr. Landron: Yes, to fix the date.

The Court: Admit it for that purpose showing the date.

There being no objection interposed to the admission of this

document in evidence, the same is admitted and marked: Exhibit G for the plaintiff.

Q. How many days did you go with the marshal to show this to the colonos there in the name of the Baron?

A. During the last answer I omitted to state that since the execution of the power of attorney up to the time of possession several months elapsed because at first they were trying to take these steps in a friendly manner. And with reference to the second question, we spent several days although I don't know exactly the number of days, but I know that several times we went to Lares to sleep and on other occasions we slept in the property in the houses of the colonos who had recognized our authority.

Q. Do you know who notified the colonos that the People of Porto Rico had taken possession, or were about to take possession of that property?

Mr. BROWN: I object to any answers that this witness may make, based upon what somebody else told him. If the plaintiff wants to prove that somebody made certain representations on behalf of the People of Porto Rico to these colonos, he could cite that person or one of the colonos himself, but what somebody may have
71 told this witness as to what somebody else notified the colonos I don't think is competent.

The COURT: It depends upon who it is that said it. We are receiving this evidence so that if I shall decide that this suit lies, I will have the proof to back up the reason for it.

Mr. BROWN: Will Your Honor give me an exception?

The COURT: Yes.

Q. (The last question was read by the Stenographer.)

A. I know that the alcaldes Don Pablo Villela and Antonio Collazo received communications to the effect that the colonos should be notified that the People of Porto Rico had taken possession of that, although I cannot recollect the date.

Q. Who sent those communications to the alcaldes?

The COURT: If you know.

A. I think that it was the Treasurer of Porto Rico.

The COURT: That is hardly the way to prove that.

Mr. LANDRON:

Q. Do you remember the time?

A. I cannot remember the time, but as there is written evidence about that, it can be seen there.

The COURT: That is what I thought. You have got that in sufficiently.

Q. Did that property only produce minor products and coffee or did it have any other source of income?

A. The property besides having minor products and some coffee, it had within its perimeter a cave called La Bajita which is full of many tons of fertilizer called 'muciligena,' being part of the phosphate of the land with the excrement of the birds, which is a cave of great extension.

72 The COURT: Now wait a minute. Was there any of this manure or guano removed during that time?

Mr. LANDRON: That is the next question.

Mr. LANDRON:

Q. What yearly income did that Bajita cave produce?

A. During many years it was not sold, but they just gave it to the colonos so as to fertilize their lands, but this of course was beneficial to the property and saved the Duchess the money which they should have employed in buying this fertilizer. Later on is the time of Mr. Yturregui.

Mr. BROWN: I object to this. He says they tell me in the time of Mr. Yturregui.

The COURT: Note the objection and I will consider this evidence with the proper weight when I come to it.

Mr. BROWN: Your Honor give me an exception.

A. He began to sell to prospective buyers.

Q. Was that during the time that the People of Porto Rico had possession of the land?

A. No, sir, after Mr. Yturregui had taken possession, and later on when Mr. Yturregui came to San Juan to take charge of the Porto Rico Ice Company, then as he was duly authorized by power of attorney, he transferred his power of attorney to me so that I could act for him.

Q. What is the value of Bajita's cave in a year?

A. In my opinion it is worth at least one thousand pesos because each ton is worth at least three dollars.

The COURT: I don't appreciate how you expect to recover for that. If that guano wasn't taken out of there, it is there still.

73 Q. Have you obtained any income from that?

A. I have in the way already stated.

The COURT: Ask him if there was any sold during the time the People of Porto Rico were supposed to have possession of this land.

A. I can't say. Afterwards, yes; they have sold some. Not only what has been sold, but as it has been used in the property, it saves that expense to the property.

Mr. LANDRON:

Q. How much do you think that Bajita cave should have produced during the time that the People of Porto Rico were in possession of that property?

The COURT: You would have to show, not what it should have produced, but what, if any, was taken out of it. The Court would look at that this way: If the guano is there it is like so much gold or flour in your house, until it is taken out it is still there and it is yours.

Mr. DEGETAU: We will not insist on that question.

No more questions.

Cross-examination by Mr. BROWN:

Q. You were 'apoderado' or attorney in fact for the plaintiff, the Baron?

A. When Mr. Yturregui had to leave or come to San Juan to take charge of the Porto Rico Ice Company, then he transferred his power to me and I have been acting as such.

Q. When was that?

A. I think it was early in the year 1907.

Q. Did you ever act as agent or attorney for the Duchess de Mahon?

74 A. Not for the Duchess but for the Baron d'Oiselay.

Q. The only time you acted as his agent was when you commenced in 1907. Had you ever been his agent previous to that time.

A. I helped Mr. Yturregui from the time that he took charge up to the time that he left for San Juan.

Q. When did Mr. Yturregui start in?

A. I have already stated that I believe it was early in 1905, and that date must appear on the power of attorney submitted in evidence.

Q. Did you have any connection with the property before that time?

A. Not directly; no, sir.

Q. Where did you live then?

A. In Aguadilla, to which district Lares belongs.

Q. How long have you lived in Aguadilla?

A. Fifteen years.

Q. Did you ever live in Lares?

A. I used to go frequently. I had business there. In the first place for private business and secondly as vice consul of Spain.

Q. Had you ever had any business relations affecting that property before the year 1905.

A. No, sir; not business relations.

Q. Had you visited the property before that year?

A. Yes, sir.

Q. Frequently?

A. Yes, sir, frequently owing to friendship with the old administrador.

75 Q. In your direct examination you stated that certain colonists were in occupation of this property during the time that the Baron was dispossessed.

A. There were almost the same colonists from the time that the Duchess was in possession up to the time that the Baron regained possession.

Q. The same people remained there in possession all the time?

A. Of course some of them moved and some died, but they are the same families.

Q. Isn't it true that the same people are there on the property who were there as rentees in 1899?

A. Yes, sir; those colonos live there on that piece by renting for one peso per cuerda provincial money.

Q. Now these same colonos have remained on that property during the period of time from 1901 to 1905?

A. Yes, the great majority of them. Perhaps some have died and some have changed their residence.

Q. Now you have spoken about the plaintiff having been dispossessed of this property. Do you know that he was dispossessed?

A. I learned from the attorneys in fact and from everybody in Lares. That was public rumor there, and I know it also because subsequently when I was his attorney in fact I had in my hands all the documents in connection with that property.

Q. Kindly ask the witness to confine himself to answering my questions. Did you have anything to do with this property in 1900?

A. No, sir.

Q. You don't know what happened in the year 1900?

A. I know what I have already stated, that the Baron was dispossessed, although I can't tell exactly the date.

Q. All you know about this dispossession that you have
76 been talking about is what somebody else has told you?

A. No, sir; not what I have learned from what they told because afterwards when I was attorney in fact for the Baron I have read all the documents and I am acquainted with all the proceedings in this suit.

Q. Did you ever see any document leasing any of this land given by the People of Porto Rico; a lease to any of these colonos?

A. No, sir.

Q. Do you know whether any colono ever paid any money to the People of Porto Rico?

A. No, sir.

Q. Do you know who these suits were against, as a result of which you accompanied the marshal to carry out an order of the court?

A. That suit had been instituted by the attorney in fact of the Baron, Mr. Baroncelli in order to recover the property of which he had been dispossed.

Q. And who were the defendants in that suit?

A. The People of Porto Rico.

Q. Who was the marshal that you went with?

A. The deputy marshal of Lares, Don Tomas Espedes.

Q. Did you get possession of the land?

A. Yes, sir.

Q. This was in the year 1905, you said?

A. I think it was in 1906 because a long time elapsed up to the time that Mr. Yturregui went there. From that time up to the time that the colonos submitted a long time elapsed because in fact when they concluded to recognize the authority was much later.

The COURT:

Q. About when was that?

77 A. At first Mr. Yturregui tried to obtain something through friendly proceedings, and also in order to collect

the arrears. Some of the colonos paid certain sums, which approximately amounted to $800.00, and later on when I also took possession I tried to induce the colonos and also requested them to accept submission, fixing the price of sixty cents per cuerda per year, which is very cheap.

Q. About when did you conclude getting possession; in what year?

A. When the colonos finally submitted, it was in the year 1907.

Mr. BROWN:

Q. Didn't the plaintiff here bring suits against the colonos to eject them from the property and to recover rents for the years from 1900 to 1905; for those five years?

A. The plaintiff during the time of Baroncelli instituted some dispossessing proceedings against five or six which he did not carry out.

Q. And did he bring other suits for the rents of this property, against these same colonos?

A. No, sir; I don't know any suits for rents.

Q. Ask him whether he knows that the plaintiff did not bring any such suits.

A. No, sir; I know of my own knowledge that he has not filed any claim, only the ejectment which he dismissed because they were not dispossessed.

Q. Did you ever see any official of the insular government, of this defendant, on the property of the plaintiff?

The COURT: At any time.

A. I have not seen him. I can't say whether he went there or not. I have not seen him.

Mr. BROWN:

Q. Did any official of the insular government make any objection or any opposition to your entering into possession of that property?

78 A. No, sir; when we went there with the marshal, no.

Q. As a matter of fact, an official or marshal of the insular government helped you get possession of it.

A. Yes, sir; and during several days a couple of insular policemen accompanied us.

Q. Do you know Don Brijilio Acevedo?

A. I knew him. He died.

Q. Do you know whether or not it is true that Don Brijilio Acevedo took possession of these lands in 1900?

A. What I know is that Don Brijilio Acevedo tried to connive with the colonos to take for himself those lands.

Q. Do you know whether or not all the colonos executed a deed in favor of Don Brijilio Acevedo?

A. I know that there was some sort of a contract between them, although I don't know whether it was a verbal agreement or a written agreement or what it was.

Mr. DEGETAU: I submit that this is not proper cross examination.

The COURT: That is true.

Mr. BROWN: This man has been testifying that the People of Porto Rico dispossessed the plaintiff and that they were in possession during that time, and I am trying to find out on what evidence he bases that statement.

The COURT: Your last question doesn't tend to that. That is purely matter of defense. Mr. Degetau objected on the ground that it was not proper cross examination, and that is truly a good objection.

Q. You say that you collected from some of the colonos rentals for the period between 1900 and 1905?

A. When we fixed the contracts, they were fixed in order to settle the question of the taxes.

Q. Will you ask the witness if he will answer my question
79 whether he collected rentals from the colonos during that period of time?

A. You ask me to say the truth and the whole truth and then you restrict me.

The COURT: When a question calls for a categorical answer, answer it first yes or no, and then explain all you want to afterwards.

Q. (The last question was repeated to the witness by the Interpreter.)

A. When I fixed the contracts, those contracts were fixed for subsequent times and at that time some of them agreed to pay some money for previous years.

Q. Well, did they pay it?

A. Therefore that belonged to the year 1906-07 and of course that was embodied in the general contract, and I have collected money in bulk belonging to those contracts and the previous contracts. Many of them have not paid at all and I did not finish to collect the full amount because I have been superseded in favor of Don Jorge Silva before finishing the period of time fixed therein.

Q. Now I want to ask the witness to answer my question yes or no, whether he collected any rents from the colonos for the period from 1900 to 1905.

(The answer of the witness to this question was not interpreted.)

The COURT:

Q. Then the Court understands you, Mr. Witness, that you did not receive any rents for the years 1900 to 1905, but you did receive some after the Baron was put back in possession.

A. Perhaps some part of it corresponded to 1905.

Mr. BROWN: That is all.

80 Redirect examination by Mr. LANDRON:

Q. You have stated already in answer to questions made to you by the Acting Attorney General that five or six ejectment proceedings have been instituted.

A. Yes, sir; it is true.

Q. On what legal grounds were those ejectment proceedings instituted?

A. I don't know because Baroncelli did it and not I.

Q. Did the colonos pay their rents?

A. No, sir; they did not recognize him as attorney in fact. They did not pay it.

Witness retires.

MODESTO ESCUDERO, being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination by Mr. LANDRON:

Interpreted.

Q. What is your name?

A. Modesto Escudero.

Q. Do you hold any official position?

A. Secretary of the district court of San Juan.

Q. Have you brought over the expediente which was cited in your summons?

A. Yes, sir.

Q. Do you have it with you?

A. Yes, sir.

Q. To what matter does that expediente refer?

A. Civil suit brought by Baron d'Oiselay against the People of Porto Rico for the recovery of lands.

The COURT: Is this the original suit?

Mr. BROWN: Yes, sir.

Q. After the judgment had been rendered by the supreme court, did any further proceedings take place in the district court
81 of San Juan for the purpose of giving possession to the Baron and to notify the colonos of the authority of the Baron over that land?

A. Not that I know of because in the original record there does not appear the order to the marshal ordering him to give possession to the Baron of the lands. There only appears in the record the judgment of the supreme court and the judgment of the district court.

Q. In the hands of what official are now the original proceedings ordering to give possession to the Baron of these lands.

A. They should be in the possession of the Marshal.

Q. What marshal?

A. I can't tell that exactly because they were sent to the marshal of the court of Lares for compliance and I don't know whether he returned them to the marshal of the district court of San Juan.

Q. You don't know whether the marshal of San Juan has them or the marshal of Lares?

A. No, sir.

Mr. DEGETAU: We are trying to simplify the proof in this case and consider an essential element the proof of these proceedings, the putting in possession. If the brother on the other side should admit that we were put in possession.

The COURT: What do you say about admitting that fact.

Mr. BROWN: I don't know or understand counsel's contention. If I understand counsel's claim, it is that when the papers were sent back from the supreme court to the district court for the execution of the judgment therein, that upon petition of the plaintiff there was an order granted by the court putting the plaintiff in
82 possession. I presume that is so.

The COURT: Well, then, is it admitted, Mr. Brown?

Mr. BROWN: I don't know. I suppose it is so.

The COURT: It is stipulated between counsel that after the case in favor of the Baron was decided by the Supreme Court of the Island and had been remanded to the district court, that a writ of possession issued and the marshal placed the plaintiff in possession of the ground he had recovered.

Mr. BROWN: The last part of that stipulation I won't agree to because my understanding is that they had a lot of subsequent proceedings against the colonos.

Mr. DEGETAU: We maintain that the suits against the colonos were not for the land but for the payment of the rent, the arrears.

The COURT: Strike out the latter part: he won't admit that. You can get the records, can you?

Mr. DEGETAU: I think so.

Cross-examination by Mr. BROWN:

Q. The witness says he has the court records of the district court in the suit brought by the Baron Laurens d'Oiselay against the People of Porto Rico. Is that correct?

A. Yes, sir.

Q. When was that remanded from the supreme court?

A. The proceedings did not go to the supreme court. They only sent there the record of the appeal, and as this is an old record and I have only been in the court since the second of January of this year.

Mr. Brown passes the document which the witness brought, to the Court and calls the Court's attention to the fact that the suit was brought against the Treasurer of Porto Rico instead of against the People of Porto Rico.

Witness retires.

83 Mr. DEGETAU: In order to make clear the steps *given* by the district court to give possession to the plaintiff, we propose that Mr. Landron should make a declaration, who went with the marshal.

RAFAEL LOPEZ LANDRON took the stand as a witness in behalf of the plaintiff and testified as follows:

Interpreted.

I remember very well that early in 1905, I went as a lawyer or attorney for the Baron before the honorable district court of San Juan filing a motion after having been cited by the honorable district attorney, that in compliance with the judgment of the honorable the supreme court, wherein it has been held that it was the exclusive property of the Baron, the property of four thousand and odd cuerdas of Lares, that he be given material possession thereof, and that it should be made known to all the colonos and inhabitants of the property. After the corresponding discussion, the honorable court issued the order, or better said, caused it to be issued. The clerk issued the order for the marshal of San Juan and the marshal of San Juan delegated the deputy marshal or the marshal of Lares. I went to Lares and was accompanied *by* Mr. Yturregui, who I think was the attorney in fact for the Baron at the time, and by Mr. Emilio de Mazarredo. I asked the help of the Alcalde if I am not mistaken, and I also think that an insular policeman accompanied us to help us in taking possession, because the tenants there refused to respect or to have any under-tanding with the authority of the Baron. We found a great many neighbors, and, as there were a great lot, we cited them for several points in the two barrios of Callejones and Piletas, and then the marshal made known there publicly that from that date and thereafter, that each and every one of the
84 neighbors or colonos of the property should recognize as sole owner the Baron and not the People of Porto Rico, owing to the fact that it had been declared by the honorable Supreme Court that the full ownership of the property with all the powers inherent to the dominion and consequent to the enjoyment had been declared in favor or belonging to the Baron. That the necessary demands were made during a series of days and upon our return, the proceedings were returned to the marshal of San Juan duly carried out. This is the essential part and the marshal in my opinion should have sent those proceedings to the clerk so that they should appear of record in the proceedings in that case as to the manner in which the judgment had been complied with, but as I cannot commit to my memory the exact date on which the Baron was actually given possession and respected and recognized as such for the payment of rent for each and every one of the colonos, I think it is necessary as proof in this case to claim whatever may be on file of the original proceedings of possession.

It is agreed by Mr. Brown, the Acting Attorney General, that the papers in question may be put in after the rest of the evidence has been produced.

Cross-examination by Mr. BROWN.

Q. Ask Mr. Lopez the time that he says he went out there to take possession.

A. I remember according to the notes which I have in my house that I asked in January of 1905 or '06, I don't remember well, for this writ of possession, and went out there a short time afterwards.

Witness retires.

85 NICOLAS YTURREGUI being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination by Mr. LANDRON:

Interpreted.

Q. Have you been the attorney in fact for the Baron d'Oiselay?
A. Yes, sir.
Q. We just want to know what the property of the Baron in Lares produced or should have produced during the time in which you were his administrator.
The COURT: If you know.
A. I estimate that it should have produced about $2100 or $2300.00, and besides I know that there was some profit proceeding from the Bajita cave.
Q. From what date up to what time did you administrate the properties of the Baron at Lares?
A. I think it was from January, 1905, up to October, 1908.

Mr. LANDRON: Nothing more.

Cross-examination by Mr. BROWN:

Q. Mr. Yturregui, the amounts that you give as the yearly rental value of these properties were the amounts you derived each year from 1905 to 1908?
A. That is the amount it should have produced according to the number of cuerdas, at the rate of sixty cents, more or less, per cuerda.
Q. How many acres did you have rented?
A. I think there were 3,000 and odd cuerdas, nearly 4,000 cuerdas under lease.
Q. Is that about all of the rentable land that there is in the property?
A. No, the leaseable land amounted to 4,132 cuerdas.

The COURT:

Q. Is some of it bad that it cannot be rented?
A. The whole land could be rented very well.
Q. Only it happened that there were five or six hundred
86 acres that were not rented?
A. I have to explain that these leases could not be made in one fixed time. At a certain time we had 2,000 acres rented and the next day we rented some more, and so forth.

Mr. BROWN:

Q. What is the character of this land, Mr. Yturregui?
A. Land proper or good for what we call in the country, minor products, and some portions of it coffee.

Q. Is it level or is it hilly?

A. It is rather level although somewhat rocky, with lime rocks, good for minor products.

Q. How much level land is there in the whole tract?

A. I can't tell that but the greater part is land which can be planted. It is land good for minor products.

Mr. BROWN: That is all.

Mr. DEGETAU: That is our case with the privilege of putting in that other document.

The Acting Attorney General at this time moved for a judgment for failure of proof on the part of the plaintiff and the Court overruled said motion and counsel excepted.

Testimony for the Defense.

JUAN GONZALEZ MERCADO being called as a witness in behalf of the defendant, was duly sworn and testified as follows:

Direct examination by Mr. BROWN:

Q. What is your name?

A. Juan Gonzalez Mercado.

Q. Where do you live?

A. In Lares.

Q. How long have you lived in Lares?

A. Twenty-eight years.

Q. Are you acquainted with a property belonging to the plaintiff in this case in Lares of some 4,000 cuerdas?

87 A. I know it.

Q. How long have you known this property?

A. Eight or nine years.

Q. Are you acquainted with the persons residing on this finca?

A. Yes, sir; I know them.

Q. What business, if any, have you had with the plaintiff in this case?

A. I want to know who is the plaintiff.

Q. The Baron Laurens d'Oiselay.

A. Not with the Baron but with Don Emilio de Mazarredo as his attorney in fact.

Q. What connection did you have with this property?

A. I was employed by Don Emilio as collector and also I have represented him in making contracts.

Q. Now when were you appointed collector?

A. In June, 1907.

Q. To collect the rents on this property, was that your office?

A. Yes, sir; collecting the rents and drawing some contracts.

Q. During the time that you were collector did you collect rents from the lessees of this property or any of the lessees of this property during the period from 1900 to 1905?

A. I did.

Q. Do you remember any of the names of any of the colonos that you collected from?

A. Gabino Garcia.

Q. Anybody else?

A. Sandalio Rivera, and some others whom I don't remember.

Q. State whether or not the agent for the plaintiff here attempted to collect from all of the colonos rents for the period of five years from 1900 to 1905.

88 A. From those who had means because the others were destitute.

Q. Did you have any difficulty in collecting these amounts?

A. None at all. The only trouble was that they were in poor condition and that the great majority could not pay.

Q. What reason did those who failed to pay for this time, allege for their failure to pay?

A. That they had no means.

Q. Do you know whether or not the same lessees or the same colonos have occupied this property during a long period of time covering the years from 1900 to 1905 and down to the present time?

A. With the exception of six who have been ejected now by order of the district court of Aguadilla.

The COURT:

Q. Did some of these occupy it before the year 1900?

A. Yes, sir; they were there.

Mr. BROWN:

Q. These five that you speak of as being ejected by order of the district court of Aguadilla were colonos in this property before 1900 and since, were they not?

A. Yes, sir; complaint was filed against them by Baroncelli in 1904 and now the attorney in fact for the Duke asked for the compliance of that judgment.

Q. Are some of the defendants in these ejectment suits, people from whom you do collect rental for this property during the years 1900 to 1905?

A. Yes, sir; after complaints had been filed against them, they made new contracts with Mr. Mazarredo, and now the new attorney in fact asked for the compliance of that judgment and they have been ejected immediately.

Q. Did your principal promise to dismiss these complaints by reason of the contracts which they made with him?

A. I don't know it.

Q. But they paid you some money on account for the years 89 from 1900 to 1905?

A. And they have a receipt.

Q. Who was the administrator of this property immediately before Mr. Mazaredo?

A. Between 1903 and '04, Don Pablo Virella and afterwards Mr Baroncelli.

Q. Did you help Don Pablo Virella in the collection of the rents of this property?

A. Yes, I told something to the colonos; made some demands from the colonos but they could not pay it.

Q. For what years rent?

A. Some have paid a year after 1907 and some a year and a half and some two years; I don't remember. The one who made the largest payment was two years back from 1907, consequently it was back to 1905.

Q. You say that Don Pablo Vireila was the administrator in 1903 to '04.

A. No, attorney in fact, and afterward the power of attorney was revoked because he could do nothing.

Q. Was he trying to collect rents from these same people?

A. Yes, he told me something and we made some demands but they were in bad straits and we could not get anything.

Q. What was the reason they didn't pay?

A. They said that they could not; that they had no money.

Q. What kind of land is this in this property?

A. Pasture land, rocky land for minor products. In 1900 there was some coffee but after the cyclone almost nothing was left.

Q. Is there a large percentage of cultivable land in it?

A. Little, not very much; the one who holds ten cuerdas cultivates four or five.

Q. How much of this land was rented at the time when you were collecting the rents?

90 A. 2961 cuerdas.

Q. And what price was it rented at?

A. Sixty cents.

Q. That was in what year?

A. 1907.

Q. You were familiar with this property before the year 1900?

A. Not before 1900.

Q. Do you know whether the cyclone of 1899 injured this land or not?

A. Yes, as in every part; as in all that district.

Q. Subsequent to the cyclone, what was the general trend of rental values in the section of Lares; in that district; whether after the cyclone the rental values in that district increased or decreased.

A. They diminished; they were in worse condition.

Q. Did you know Don Virgilio Acevdo?

A. I knew him.

Q. Was he one of the colonos of this property?

A. I don't know.

Q. Do you know Miguel Acevedo?

A. Yes, sir; I know him.

Q. Is he related to Virgilio?

A. No, sir; he is not a relative. Miguel Acevedo is a colono.

91 Q. Do you know what the rent of this land was before the year 1900?

A. By cuerda?

Q. Yes.

A. They paid a Spanish peso, eight bits; and I know it because I saw the contracts.

Q. Who were these contracts between?

A. Between those colonos.

The COURT:

Q. And who?
A. Between Don Miguel Coll and the colonos.

Mr. BROWN: Nothing more.

Cross-examination by Mr. DEGETAU:

Q. What was the effect of the cyclone, according to your experience, in the Island for pasture and minor fruits?
A. In that land there are many hills and the landslides produced great damage.
Q. I am asking in regard to the pasture land, did it destroy pasture?
A. Not the pasture but the minor products, yes.
Q. What kind of minor fruits did the cyclone destroy?
A. Beans, corn, sweet potatoes and yautea and minor products.
Q. How did it destroy it?
A. Because the surrounding lands are hills and the rock slid from the hills and destroyed the plantation below.
Q. You were in the plantation after the cyclone?
A. Yes, sir; and before too.
Q. What time?
A. Some time before.
Q. No, after the cyclone.
A. Yes, sir.
92 Q. But immediately after the cyclone: the day after the cyclone.
A. I went there and saw part of the property. I could not well see 1,000 cuerdas.
Q. How many cuerdas did you see destroyed by the cyclone?
A. The edges of the road; you pass by the road and you see the plantations there; I can't state the number of cuerdas.
Q. What you saw from the edge of the road?
A. Yes, sir.
Q. Nothing more than the edge of the road?
A. I used to travel there frequently between Arecibo and Lares, and for that reason I saw the land in that vicinity.

The COURT:

Q. It was cultivated the next year the same as before, was it?
A. Afterwards, yes, as the time of cultivation of minor products is very short.

Mr. DEGETAU:

Q. How much did you receive from these colonos to which you have referred, and for which years?
A. I received two thousand and odd dollars, but I can't say which part belonged to the arrears or what because part of it was collected by Don Emilio de Mazarredo. I am going to answer now sure (referring to a paper), 2226 pesos.
Q. Corresponding to what years?

A. Some colonos paid only one year and some others did not pay anything at all, and so forth. The one who made the greatest payment was for two years in arrear.

Q. How much do you think belonged of this sum to those who paid in arrears?

93 A. I can't tell that because a part was collected by Mazarredo and part by myself. I think, more or less, a thousand dollars.

Q. Could it be 800 dollars?

A. Yes between 800 and a thousand dollars between me and Mazarredo.

Q. You have said that six of these colonos were sued in the courts by Baroncelli.

A. When he was attorney in fact.

Q. For what reason?

A. In ejectment.

Q. In ejectment for the payment of the arrears?

A. Yes, sir; and subsequently they made a new contract with Don Emilio de Mazarredo.

Q. In what day did you begin to make these collections?

A. From June, 1907.

Mr. DEGETAU: That is all.

Redirect examination by Mr. BROWN:

Q. Have you any means of knowing what that property was worth during the years from 1900 to 1905?

A. I could say now but not at that time, although I am not expert in that line.

Q. You don't know what price the property was offered at?

Mr. DEGETAU: We have to object to that. We are not discussing the value of the property.

The COURT: I don't see the object of asking this unless it is to show that it was not worth anything and for that reason could not be rented.

94 Mr. BROWN: There is no evidence of any rental between 1900 and 1905. The rental value would be derived from the value of the property and it seems to me it would be competent to show what the value of the property is to determine the rental value.

The COURT: The question will be permitted.

A. We offered $10,000.00; Don Juan Saen.

Mr. DEGETAU: I think it is more competent to show any offer of rent of less than sixty cents.

The COURT: Yes, that is true, Mr. Brown.

Q. What in your opinion, from your knowledge of this property and knowledge of the rental obtained from properties of that character in that vicinity in the years immediately subsequent to the cyclone, what was the rental value of this finca per cuerda?

Mr. DEGETAU: We have no word here that this witness is an expert and we have to object to that question.

Mr. BROWN: My recollection is that there is not one iota of evidence here as to the rental value of that property during the years from 1900 to 1905.

The COURT: Unless, Mr. Brown, you confine yourself to the effect of the cyclone. it seems to me that would be competent for you if you can show that the cyclone so reduced the rental value of that land that they would not have paid much for it because it was ruined.

Mr. BROWN: My question is directed to that end, that all rental values dropped at that time, not only because of the injury
95 to the land but also to the impoverishment of the people

The COURT:

Q. Ask the witness to state whether after the cyclone rents of land were reduced in that vicinity.

A. Yes, they were reduced.

Q. Very much?

A. Almost to one half.

Q. Did places renting for as low as sixty cents an acre go down to thirty cents?

A. My evidence refers to actual values of land and not to rental values. I understood that it was referring to the price of property sold.

Q. Did rental values or not go down?

A. I could not see any transaction that I might say that I can judge from as to that.

Mr. DEGETAU: I would like to ask this witness a question: whether in those rents that he says he collected, he collected at the same price belonging to those years in arrears at the same price per cuerda or less.

A. At the same rate of rent: sixty cents.

Mr. BROWN:

Q. Now in the back rent that you collected, didn't you make a reduction in the amount?

A. The one who paid most, paid two years at the rate of sixty cents and another one paid one year at the rate of sixty cents and another one for half a year also at sixty cents. It was an agreement entered into with the colono.

Q. Were not these colonos given receipts for all monies due up to the time when the receipt was given covering the period from 1900 to 1905?

96 A. Yes, sir; I gave them a final receipt for all the back years.

Q. A suit had been brought against certain of these colonos for five years back rent; isn't that true?

A. I didn't see the complaint but it may be so.

Q. But it was in settlement of these suits that they paid these amounts, was it not?

Mr. DEGETAU: I object to that question.

Q. Do you know Pedro Torres Quiles?
A. I do.
Q. Was he one of the colonos?
A. Yes, sir; one of the colonos.
Q. Was he on this property during the years 1900 to 1905?
A. He was.
Q. Did he pay you anything?
A. Yes, sir; he paid. After the complaint was filed in 1907, a contract was made with him by Don Emilio.
Q. And did you give him a receipt in settlement of all claims against him?
A. We specified in the contract that he should pay a certain amount for what he owed.
Q. For overdue rents? Did that refer to a time back previous to 1905 or not? We want to know if you were pretending to give him a receipt for anything that might be due from 1900 to 1905?
A. For all the years back.
Q. Did it go back to the time that the government is said to have had this land?
A. No, sir; it did not refer to anything of that kind.

97 Mr. BROWN: Now that the Court may understand more clearly what the witness is talking about and what I am trying to bring out from the witness, I want to call Your Honor's attention to three cases reported in the decisions of the supreme court of Porto Rico for 1906. Each of these are certioraris to the district court of Aguadilla. Now, the first of these suits states in the opinion that the Baron Laurens d'Oiselay, through his administrator and general attorney Alberto de Baroncelli, brought suit against Juan Arbona for $147.00 that was due him for five years of rent, and this opinion of the supreme court is on the 30th of April, 1905. The suit was filed in the municipal court of Lares in 1906. And then we have another suit that was brought by this same agent of the Baron against Francisco Javier Soto for five years' rental; and here is another one against Victor Martinez, and I have a lot more here.

The COURT: What happened to those suits? Were they demurred out of court, or what?

Mr. BROWN: I understand that there was a recovery had in all of these suits.

The COURT: What are you reading from?

Mr. BROWN: The supreme court reports of Porto Rico. Now this witness testified that there was a contract celebrated with all of these people who had been sued in ejectment and against whom, I don't know whether judgment had been issued at that time or not, and that this contract was to take care of the rents that were due,

98 that they were being sued for, and now he says that subsequently the new agent of the Baron that has come in has asked for the execution of these judgments against these various tenants, but my object in calling Your Honor's attention to these cases and in presenting these other cases which don't appear in the supreme court reports, will be to show that this plaintiff has pro-

ceeded to the collection of rents from these various colonos for the years from 1900 to 1905.

The COURT: Which you contend he had a perfect right to do and ought to have done and not bothered you?

Mr. BROWN: Yes.

The COURT: What became of all those suits and how does that arise here?

Mr. BROWN: In this way: He states that he made a contract with these colonos to take care of these old claims, and I call your attention to them to show what the old claims were.

Mr. DEGETAU: We are not claiming these amounts that were paid, which we admit were about $800.00.

Q. Do you know why these tenants had not paid the rent due during these years from 1900 to 1905?

A. I don't know during that period of time.

Q. Weren't you trying to collect some of these rents?

A. Yes, sir; in 1903 when Don Pablo Virella was attorney
99 in fact, I collected them and they said that they could not pay because they had no money.

Q. Did any of them set up that it was because they had these lands from the People of Porto Rico?

A. No, sir; they didn't say anything about that.

Mr. DEGETAU:

Q. Whom did Virella represent at that time, in 1903?

A. The Baron, the Duke; the power of attorney granted him was revoked and transferred to Baroncelli, and I had the power of attorney in my hands because it was drawn in the office of Notary Palmer.

Mr. LANDRON:

Q. I think you have stated in the direct examination by the Attorney General that you have given receipts in settlement to several of the tenants intervening, as a collector of the rents of the property. Is that a fact? Whom did you represent at the time?

A. Don Emilio de Mazarredo.

Q. Had you any written authority from him?

A. Yes, sir.

Q. Were you authorized to cede to the tenants in an amicable manner any part of the rents due?

A. In the first place he authorized me to respect the contracts which he had made, and that if any colono failed in the compliance with that contract, to have a friendly understanding with him because the first contracts were made by Don Emilio.

Q. Those contracts made by Don Emilio; to what dates did they refer?

A. To 1907, I think; I am not sure.

100 Q. Did you give any account, or did anybody approve any friendly settlement made by you with the tenants?

A. Yes, sir.

Q. State the names of the tenants with whom you made friendly settlements.

A. I don't remember at this time. I don't remember well.

Q. Do you remember the number of tenants with whom you made said friendly agreements?

A. I don't remember the number.

Q. More or less.

A. There were very few, those who remained to settle with.

Q. Please state what sort of arrangement you made with them.

A. Excepting two or three of the last contracts which I made all the rest paid from 1907 on because those were the most poor.

The COURT:

Q. How many colonos did you settle with in that way?

A. With very few because Don Emilio at that time had already made contracts and I acted as a witness in those contracts.

Mr. LANRON:

Q. You have stated that with the exception of two or three, all the rest paid.

A. Of the colonos with whom settlement was still pending, except two or three who paid some arrears, the others paid me from 1907 on.

Q. That is what you mean?

A. Yes, from 1907 on.

Witness retires.

101 NICOLAS YTURREGUI, being called as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. BROWN:

Q. Did you give the receipts to the colonos for the rents that had been collected from them?

A. No, sir.

Q. Did you sign any of the receipts?

A. Yes, sir.

Q. Do you know Juan Arbona?

A. I do.

Q. Was suit brought against him in ejectment for five years' rent?

A. He was sued by Mr. Baroncelli who gave me power of attorney.

Q. Now, did he pay you?

A. Yes, he paid me a sum.

Q. He paid you for the whole five years from 1900 to 1905?

A. I can't state. I know that he gave me a certain amount in settlement of a debt.

Q. It was in settlement of the amount sued for, wasn't it?

A. No, sir; it was sort of a friendly settlement on account of certain considerations which we had to observe for him because in fact, although he appeared as a debtor, there were other parties who were using the land.

Q. Didn't he give you a note for $150.00, stating that that was in settlement of all accounts and judicial claims?

A. I can't say that. That appears on the face of the receipt which I don't remember now how it reads.

102 Q. He paid everything that he owed, did he?

A. No, sir; I have received from him as a friendly settlement, owing to the circumstances already stated, that he had there in the property some other people.

Q. But you don't claim that he owes you anything more?

A. I don't know whether I made any further claim. I know that I made some agreement with him and that I received that sum, because after receiving that sum I retired.

Q. Did Miguel Acevedo pay you or did you give Miguel Acevedo a receipt for the rents from 1898 to 1907?

A. It may be. I don't remember now but you have the receipt in your possession, in your hands.

Q. Did you give a receipt to Baltazar Marquez?

A. Yes, sir; I also remember having received a small sum.

Q. What was that in payment or settlement of?

A. I know that he had some portion of land; I don't remember whether in his name or in the name of another party, although I remember that I received a certain sum from him.

Q. How much altogether have you collected for rents during the years 1900 to 1905 from different lessees of the property?

A. I can't state whether what I have received corresponds from 1901 to 1905. I state that I have received a sum. I remember that I received a certain sum as per a certain settlement or agreement which I made amounting to 1,000 or 1500 pesos, but out of this sum I received in cash between 600 and 800 dollars; the rest in notes which I have not received, which I have not collected.

103 Q. Did you have anything to do with the property in 1900?

A. No, sir; absolutely. I was appointed attorney in fact in January, 1905. Before that time I had nothing to do in that connection.

Q. You don't know anything about Mr. Acevedo's claim to this property?

A. I think he tried to take it away from the People of Porto Rico and make some contracts with colonos.

Mr. Degetau: I have the objection of diverting the attention from our claim.

Mr. Brown: That is all.

Cross-examination by Mr. Landron:

Q. Did you authorize at any time as attorney in fact of the Baron to reduce or forgive a part of the arrears?

A. No, sir.

Mr. Landron: That is all.

Witness retires.

ANTONIA F. CASTRO being called as a witness in behalf of the defendant, was duly sworn and testified as follows:

Direct examination by Mr. BROWN:

Q. Mr. Castro, you are secretary and reporter of the supreme court?

A. Yes, sir.

Q. Who has the charge and custody of the cases filed in the supreme court of Porto Rico and the judgments rendered by that court?

A. I do.

Q. Mr. Castro, were there any cases filed in the supreme
104 court on appeal, in which the Baron Laurens D'Oiselay was the appellant, affecting a property belonging to the Baron in the municipality of Lares in the year 1904?

A. Yes, sir; rather he was not appellant; he was petitioner.

Q. What was the nature of those actions?

A. Well, the cases were several cases of certiorari which attorney Lopez Landron started in the supreme court by a petition filed there on behalf of the Baron. The case was an original case brought in the municipal court, I think, in Lares or Aguadilla

Q. Can you tell from reference to the record itself?

A. Yes (Witness refers to some papers which he holds in his hands).

Q. Can you give the titles of the cases?

A. Yes, sir; one case is the Baron Laurens d'Oiselay, plaintiff, against Juan Arbona, defendant; collection of money. This is the original case and it was brought in the municipal court of Aguadilla and judgment was rendered there in favor of the plaintiff and then the case was appealed to the district court of Aguadilla by the defendant and the plaintiff or appellee failed to appear in the district court of Aguadilla, and the defendant made the motion to the court that the case be dismissed because the appellee failed to appear before the court. Now the court granted that motion and entered an order dismissing the original complaint.

The COURT:

Q. In the lower court?

A. In the lower court; and then the Baron came before the Supreme Court and filed a petition by Mr. Lopez Landron to issue a writ of certiorari to the district court to decide whether they were
properly dismissed. The case was brought up by cer-
105 tiorari and the supreme court reversed the order and ordered the district court to go on with the case because the appellee was not required to appear.

Mr. BROWN:

Q. What was the title of that case?

A. The case of the Baron v. Arbona. The decision of the supreme court was different. It dismissed the writ because he had another remedy. That was the decision of the supreme court in

that case. There are others; a case of unlawful detainer. One of them is the Baron against Pedro Torres Quiles for unlawful detainer.

The COURT:

Q. Anything else except the mere possession fought for in that case; anything about rents?

A. Here it says on the 15th of December, 1904, the trial was had (reading from document).

Mr. BROWN:

Q. On the 15th of December, 1904?

A. On the 15th of December, 1904, trial was had of said action before the municipal court of Aguadilla and that court rendered a judgment in favor of the plaintiff, and now the sentence of this court is that the defendant deliver the possession of the land which he holds or held, within the term of twenty days, and that if he should fail to do so, a writ should be issued to the marshal to eject him from the property.

Q. Does the record show what property that treats of?

A. Yes, it says that it was a parcel of land of 4133 cuerdas. It is 1,000 belonging in full ownership to the Baron and recorded in the registry of property in Aguadilla in his favor by virtue of a final judgment rendered by the supreme court on the 22nd of January, 1904.

Q. Now, what was the result of that case in the supreme court?

A. The result in the supreme court was reversing the order of the lower court and directing the lower court to proceed and hear the appeal.

Q. Now what are the titles of the other cases? Are the
106 others all of the same character as this?

A. The same; unlawful detainer.

The COURT:

Q. How many are there, Mr. Castro?

A. I have here five more.

Q. Are they all about the same date?

A. Yes, sir; they are numbered in consecutive numbers.

Mr. BROWN:

Q. The trials in the municipal court of Aguadilla were all about the same date?

A. This case of the Baron against Ignacio Cruz, the trial was had on the 14th of December, 1904.

The COURT:

Q. All in December, 1904?

A. Yes, it seems so.

Q. How long before that were they filed? I would like to know when those proceedings were commenced.

A. It says here that on the 23rd of May, 1905, they made a mo-

tion to the district court of Aguadilla requesting the court to issue an order dismissing the action of the plaintiff. That was on the 23rd of May, 1905.

The COURT: Can't you tabulate these for me, Mr. Brown?

Mr. BROWN: Yes, I can do so.

The COURT: Take a single page and put down the numbers and the dates of the different cases.

Mr. DEGETAU: For the purposes of the case I should like to have it show that all of these dates are after the decision of the supreme court.

The COURT: Counsel for the defendant promises to tabulate these cases.

A. There are seven cases, six for unlawful detainer and one for the collection of money.

107 Cross-examination by Mr. LANDRON.

Q. Mr. Castro, I want it made to appear the date of those certiorari proceedings.

The COURT: Tell Mr. Landron that we have just agreed that counsel for the other side will put that in the record.

Mr. BROWN: Perhaps the better way would be for me to ask Mr. Castro to make a certificate.

The COURT: If you can so induce Mr. Castro to oblige you in that way.

Q. How many expedientes have you there in your hands?

A. Seven.

Q. Are there any ejectment proceedings there from the municipal court of Lares?

A. Yes, sir.

Q. How many are they?

A. Six.

Q. Is there any for the collection of any sum of money?

A. Yes, sir, one.

Q. On which ground were those ejectment proceedings filed?

A. The action of unlawful detainer was based on the fact that the property belonged in full ownership to the Baron and were recorded in his favor in the registry and that the title was declared in his name by judgment in his favor of the supreme court in 1904.

Witness retires.

FRANCISCO GUTIERREZ CEPERRO being called as a witness in behalf of the defendant, was duly sworn and testified as follows:

Direct examination by Mr. BROWN.

Interpreted.

Q. What is your name?

A. Francisco Gutierrez Ceperro.

108 Q. What position do you occupy today?

A. Record keeper in the department of the interior.

Q. As such record keeper, are the files of the department under your charge?

A. Yes, sir.

Q. State whether or not this is one of the expedientes in the department under your charge (handing a document to the witness).

A. Yes, sir.

The COURT: Do you offer this in evidence?

Mr. BROWN: I offer this in evidence. I offer the whole expediente because it is all joined together although only part of it is material. It is the correspondence on the petition had by one Virgilio Acevedo directed to the Commissioner of the Interior for 1,133 cuerdas in the barrios of Piletas and Callejones, municipality of Lares.

Mr. DEGETAU: I object to the admission of this proof because this document refers to the question of title that was discussed by the supreme court and is res adjudicata and is not pertinent to the question of rents. That is the case before the Court.

Mr. BROWN: Counsel does not understand the object of the presentation of these papers. It is not to show the title of Mr. Acevedo or anybody else, but it is mere evidence of the fact which is set up in the answer that plaintiff's possession was disturbed by the colonos of the property and by one Acevedo in July, 1900. That is prior to the first act of the Treasurer of Porto Rico, on which plaintiffs base their present action, and that this interruption continued during this time and that possession was in these colonos under the claim of right that they had.

109 The COURT: The Court apppreciates the position of both counsel, but because it is taking the evidence in this case with a view to determining whether there is any liability, and if there is, to render a judgment, it will receive it subject to the objections just entered by the plaintiff, to which action of the Court plaintiff objects and excepts on the ground that the Court should not receive it for any purpose. Is that an original document, Mr. Brown, that you can't leave with the Court.

Mr. BROWN: That can be left with the Court. I suppose after the case is over, it should be returned.

The COURT: Ask Mr. Gutierrez if it would inconvenience him to leave that with us for a short time.

A. Not at all.

The COURT: Then we will keep it for a short time, but it is subject to his order whenever he wants it.

The document in question was then placed in evidence and marked: Exhibit A for the defendant.

Witness retires.

Mr. BROWN: I would like to inquire of the Court whether the Court requires a certified copy of the appeal record in the case of the Baron Laurens. The judgment of the supreme court has been filed by the plaintiff. Whether Your Honor wants a certified copy of the record in that case to establish the fact of my contention that the suit was filed against the Treasurer of Porto Rico and not

against the People of Porto Rico, and has not been amended in that regard.

The COURT: Am I not bound by what the supreme court of the Island says?

110 Mr. BROWN: The supreme court starts in its opinion and states that in a trial carried on in the district court of San Juan between Manuel Baron Laurens d'Oiselay on one part and on the other part the People of Porto Rico, and then it goes on to say that on the 30th of January, 1901, the Baron filed a complaint against the Treasurer of this Island before the district court. That is to say, it treats of it in both ways. I say that although the supreme court incurred a mistake in the title which it gave this case, neither the supreme court nor any other court can make one a party who has never been joined a party defendant in the face of the records of the case.

The COURT: Because of the very peculiar way I am hearing this case, you may introduce anything you choose to show me that fact, but whether or not I will go back of the decision of the supreme court, or have any right to do it, I will decide later. I will permit you to submit anything you choose to convince me of your contention.

Mr. BROWN: Does Your Honor wish a certified copy of that record?

Mr. DEGETAU: I will say that this record to which he refers has been already filed and Your Honor can see that and can see the opinion of the Court.

Mr. BROWN: I don't remember that record.

Mr. DEGETAU: It is Exhibit A for the plaintiff (handing the paper in question to counsel for the defendant.)

111 Mr. BROWN: No, this is the opinion of the supreme court, but I am talking about the record of that case in the lower court, that was produced by the secretary of the court yesterday.

The COURT: Take such excerpts from that other record as you need and submit it to the other side and file it. The Stenographer may receive it at any time.

The document in question is to be marked: Exhibit B for the defendant when presented.

Mr. BROWN: I offer in evidence a certificate of the municipal treasurer of Lares, endorsed by the alcalde of that town, showing the taxes paid on the property of the plaintiff, that is the subject of this action, during the years 1895-96-97 and '98.

The COURT: What is the object of that?

Mr. BROWN: The object is that it bears upon the value of the property, the rental value of the property.

Mr. DEGETAU: Plaintiffs object to that as immaterial and irrelevant.

The COURT: We will receive it subject to the objection.

The document in question was then placed in evidence and marked: Exhibit C for the defendant.

Mr. BROWN: I offer a certificate from the Treasurer of Porto Rico

to the effect that he has no record of having received any rents or benefits from this property.

The COURT: Yes, that ought to go in because you have alleged that you derived no benefit from this property.

112 Mr. DEGETAU: We have no objection to that.

The document in question was then placed in evidence and marked: Exhibit D for the defendant.

Mr. BROWN: I also offer in evidence a certificate made by the Commissioner of the Interior as to the result of the search in the files of his department showing that the property comprising 4,133 cuerdas belonging to the Baron Laurens d'Oiselay or to the Duchess Mahon Crillon in the barrios of Piletas and Callejones has never been in the possession of that department and that no contracts or leases have been made by that department affecting this land and no income has been received from it.

The COURT: Is that the department that would have made it?

Mr. BROWN: As Your Honor knows, the department of the Interior is the official custodian of public lands.

The COURT: Was it at this time?

Mr. BROWN: There is considerable doubt as to what official may have been at the time this action was taken by the treasurer of Porto Rico, that is to say, in September, 1900. None of the new laws were in force. The political code was enacted the subsequent year so these officials had the bare powers which were given them under the Foraker Act, but it was a moot question then and has been since as to how far they inherited the powers of their predecessors, so as to avoid any possible question I am introducing this so that the plaintiff cannot argue that the treasurer may have turned this over to the department of the interior.

113 The COURT: I see your object. Submit it to the other side.

Mr. DEGETAU: I object to the admission of this proof on this ground: First, that it was and it is stated in the complaint that it was the treasurer who directed the colonos to bring their titles and to notify them through the alcalde or through the local authorities of the People of Porto Rico taking possession of it. Second, that it is and it was and has always been since the People of Porto Rico became an organized body, the treasurer the custodian of all public funds or funds coming from lease of public lands, and not the commissioner of the interior.

The COURT: I believe that he admits that, Mr. Degetau, but he only offers this out of an abundance of caution.

Mr. BROWN: In view of the fact that under the political code the commissioner of the interior is the custodian of public lands, he may make leases of public lands for a period of time up to nine years, and he actually does make leases of public lands.

The COURT: Received subject to the objection. The Court doesn't know what weight it may have yet.

The document in question was then placed in evidence and marked: Exhibit E for the defendant.

MIGUEL COLL being called as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. BROWN:

Interpreted.

Q. Mr. Coll, I think you have already testified that you were the administrator or administrator of the lands of the Duchess of Mahon in Lares.

114 A. Yes, sir.

Q. Up to the year 1899.

A. Yes, sir.

Q. Did you have any participation in the conferences between the treasurer of Porto Rico and the Baron Laurens relative to this property after it had been registered or inscribed in the name of the People of Porto Rico.

A. Yes, sir.

Q. Who was then treasurer at the time?

A. Mr. Hollander.

Q. Will you tell the Court what the treasurer stated as to the action that he had taken and as to the object of that action?

A. The Baron called me to San Juan to speak to me as attorney in fact which I had been for his aunt, the Duchess of Mahon, and when I came over he invited me to go and see the treasurer. We went to visit Mr. Hollander and upon presenting to him the papers which the Baron had with him, he said that he had ordered the lands to be put in the name of the People of Porto Rico because Mr. Acevedo was trying to take hold of those lands or appropriate them to take possession; as appeared from a deed which he had executed before a notary.

Q. And the object of inscribing the title in the name of the People of Porto Rico was to prevent Mr. Acevedo from taking this possession?

A. Yes, sir; that is what he stated.

Q. Who succeeded you as administrator of this property?

A. Pablo Canals after me.

Q. Was this property without any administrator for any considerable length of time after you ceased as administrator?

A. I think for about four months.

Q. This conversation that took place between Mr. Hollander and the Baron was before the suit was filed by the Baron against the treasurer?

A. Yes, prior to that.

115 Q. And can you remember approximately when it took place? Was it in the summer or what month?

A. The months when I came here?

Q. Yes.

A. I think it must have been by the end of the year 1899 or January of February of 1900.

Q. Do you remember when the Baron came to Porto Rico?

A. About that same time.

Q. In January, 1900?

A. I think it was early in 1900. I have an idea that that happened at that time.

Q. Just to refresh the recollection of the witness in order that he may not incur any mistake, will you tell the witness that the complaint states that the treasurer ordered the inscription of this property in September, 1900, and this conversation had to do with the inscription of the property. I want to ask the witness if he is sure about the time.

The COURT: Is that the date it was filed for inscription or the date it was inscribed?

Mr. BROWN: The date it was ordered I believe.

The COURT: You may ask him that by a direct question.

Q. The interview that you and the Baron had with Mr. Hollander took place after the Baron's property had been inscribed in the registry of property in the name of the People of Porto Rico, did it not?

A. Yes, sir; afterwards.

Q. So that if this inscription in the registry of property was made in September, 1900, the interview must have been after September 1, 1900.

A. Then it must be 1901. I don't remember well. I know that it had already been inscribed in the name of the People of Porto Rico.

116 Q. Do you know whether there was any objection made by yourself or by the succeeding administrador to this inscription in the registry of property before the Baron's arrival?

A. No, sir, not that I know of.

Mr. BROWN: That is all I think.

Cross-examination by Mr. DEGETAU:

Q. After the property was inscribed in the registry of property in the name of the People of Porto Rico, who administered it?

A. For a short time Mr. Pablo Cabals.

The COURT:

Q. And afterwards?

—. ——.

Mr. DEGETAU:

Q. After the People of Porto Rico did any of the attorneys in fact of the Baron receive any money from the property that you know?

Mr. BROWN: I object to this question as not being proper on cross-examination. It doesn't appear whether he knew or not.

The COURT: You endeavored to show me, Mr. Brown, by the witness that he came here and the treasurer of his own volition stated I have caused that to be inscribed in the name of the People of Porto Rico. Of course you want to leave the inference by that that he took it and managed the thing. Then you asked the further question: Did you or the Baron object to this proceeding? And he said: No, they did not. And that would indicate an acquiescence.

Mr. BROWN: The object I had in producing the witness is only arrived at by the witness' full answer: That the Treasurer had taken charge of this property because a pretender of the Baron was about to take it; in fact he took charge of it to prevent that.

The COURT: I rule with you, Mr. Degetau.

Mr. BROWN: I wish an exception.

117 Q. (Was repeated by the Interpreter.)
A. Not that I know of.

Mr. BROWN:

Q. Do you know whether they did or did not, Mr. Coll?
A. I ignore it. I don't know.

Mr. BROWN: If Your Honor didn't understand the witness on direction examination, I will ask him to repeat it.

The COURT: I didn't understand that and you might ask him to repeat.

Q. Will you tell the Court once more, Mr. Coll, the reason that Mr. Hollander stated for having ordered the property in Lares inscribed in the name of the People of Porto Rico.

A. In view of the documents or papers which the Baron produced, he stated to him that he had ordered the transfer of the title in favor of the People of Porto Rico, referring to those lands, because Mr. Acevedo, Mr. Virgilio, pretended to take possession of part of those lands and that before that should happen and come into the hands of Mr. Acevedo, it should be inscribed in the name of the People of Porto Rico.

Mr. BROWN: That is all.

Witness retires.

CHARLES MEADE being called as a witness in behalf of the defendant, was duly sworn and testified as follows:

Direct examination by Mr. BROWN:

Q. What is your name?
A. Charles Meade.
Q. And what is your occupation?
A. My occupation is assessor of property for the insular government.

118 Q. How long have you been employed in that capacity, Mr. Meade?
A. Five years.
Q. Have you ever worked as an assessor in the town of Lares?
A. I have: yes, sir.
Q. Do you know a property in that town belonging to the Baron Laurens d'Oiselay of some 4133 cuerdas extension?
A. Yes, sir.
Q. Have you been over this property?
A. I have been over the larger part of it.
Q. Will you describe to the Court the general nature of the land?

A. The general nature of the land is limestone rocks and small hills and between the hills there are small portions of level land that they call vegas. Possible ¾ or 4/5 of the land is upland, stony.

Q. Is it mountainous?

A. Yes, quite so; low hills or mountains.

Q. From your examination of the land, what would you say as to the proportion of it that is capable of cultivation, if you formed any estimate?

A. It is land that cannot be cultivated with the plow. It must be cultivated only with the hoe or pickaxe and I should judge that possibly forty or forty-five per cent might be cultivated in a way.

Q. Is there any coffee on the property now?

A. Very little coffee left on the property now; what they call small pieces 'manchas.'

Q. Have you had reason to inform yourself as to the rental values of properties of this character in Lares in the years, say for the four years subsequent to the cyclone in 1899?

A. Well during the years immediately after the cyclone, 1900, 1901 and 1902, rental values were very very low if they could rent the property at all, because there was apparently very little 119 business, and coffee was way down and people had very little money with which to work the land or rent it, but afterwards it has commenced to increase. But for the years immediately after the cyclone, everything was down. Rental values were possibly fifty per cent of what they were before the cyclone; fifty per cent less.

Q. What is the land devoted to; what use is made of the land and has been during your knowledge of it?

A. The majority of it is in pasture but some of the colonos planted small crops like beans which pay very little. Some of the protected portions in the hills are planted in coffee, but very little, possibly twenty per cent. It being stony land, after the cyclone most of the vegetable soil washed away and left the soil in poor condition.

Q. You said that you have knowledge of the rentals that property of this character have produced in the municipality of Lares and in that section between the years 1900 and 1905.

A. In a general way; not exactly on this property.

Q. That was the question, whether you knew generally or had occasion to know.

A. As a general trend of the property for the jurisdiction of Lares, yes, sir.

Q. What, in your opinion, was the rental value of this property during the years 1900 to 1901 and '02?

The Court: You may put that in, but it seems to me I will have to sustain Mr. Degetau's view of that. But you may put it in the record.

A. The prices were out of the question altogether. People could not rent or pay, but before the cyclone they could rent it for sixty cents, but actually after the cyclone it would not be worth more than

fifty per cent, which would be thirty cents, if they could collect it. People could not pay.

120 Q. Was all of this property capable of rental?

A. No, there is a large part of it, possibly one-third, that is almost useless except for pasture for goats and things of that kind.

Mr. BROWN: I think that is all.

Cross-examination by Mr. LANDRON:

Q. Does the witness know how much the tenants paid per cuerda to the Baron during his administration, according to the contracts?

A. For what years?

Q. Prior to the taking possession by the People of Porto Rico.

A. The people have shown me the receipts that they paid 60 cents an acre.

The COURT:

Q. That was gold?

A. Sixty cents gold or one peso provincial.

Mr. LANDRON: That is all.

Witness retires.

Mr. BROWN: The defendant rests. I understand that you gave me permission to file these certificates from the supreme court.

The COURT: Yes, and Mr. Degetau's side has permission to put in a certificate from the marshal of Aguadilla or Lares. Mr. Degetau, what is the amount of your claim here?

Mr. DEGETAU: In view of the result of the trial and cutting out the mesne profits, I would like to reduce the amount of the claim for the 7 years which the Baron was deprived of the use of the land, at the rate of sixty cents per cuerda, discounting the thousand dollars brought out in the evidence.

The COURT: That will make a claim of about how much?

121 Mr. DEGETAU: Between fifteen and twenty thousand dollars.

The COURT: Mr. Brown, I understand that you are going to press your claim that the People of Porto Rico have been sued without their consent.

Mr. BROWN: That is naturally involved in this case.

The end.

Stenographer's Certificate.

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States for Porto Rico, hereby certify that the foregoing document, consisting of eighty-one typewritten pages, is a true and correct transcript of all the evidence in the case of the Baron Laurens d'Oiselay versus The People of Porto Rico tried in the above entitled court in June, 1909, which said testimony was reported by me in shorthand at the time of the trial and was thereafter by me transcribed from said shorthand notes.

(Signed) ARTHUR J. HARVEY,
Official Stenographer of the District Court of the United States for Porto Rico.

The Court on the 7th day of September, 1909, rendered judgment in favor of Plaintiff and against the Defendant, The People of Porto Rico, for damages in the sum of $7,450.00 and costs, including fees of stenographers for transcribing testimony.

The foregoing constitutes the testimony, the statement of all the evidence introduced and offered upon the trial of this cause, motions and exceptions thereto, and of the whole case and exceptions thereto.

I, Bernard S. Rodey, do certify that I am the Judge before whom the above entitled cause was tried; that Arthur J. Harvey was the official stenographer of the Court who reported said cause; that the annexed and foregoing shorthand report of the evidence,
122 duly certified to by the said official stenographer, is the report of the evidence in said cause and contains all the evidence offered, given or introduced in said cause by the respective parties upon the trial thereof; all objections and motions of the said parties thereto, or any part thereof, and all rulings of the Court upon such objections and motions, and all exceptions to such rulings; The said report, with this certificate, is ordered to be filed and made a part of the record in this case.

Signed this 13 day of June, 1910, as of April 9, 1910.

(Signed) B. S. RODEY.
Judge of the District Court of the United States for Porto Rico.

And the said Defendant, The People of Porto Rico, on the 13 day of June, 1910, as of date April 9, 1910, and within the time allowed by law, tendered this, its bill of exceptions, it having been reduced to writing and all of the exceptions taken by the Defendant during the progress of said trial being embraced therein, praying that the same be signed, sealed and made a part of the record in this cause, which is accordingly done on the 13 day of June, 1910, as of date nunc pro tunc of April 9, 1910.

(Signed) B. S. RODEY.
Judge of the District Court of the United States for Porto Rico.

This is to certify that on this —— day of —— at San Juan, Porto Rico, I personally examined the foregoing bill of exceptions proposed by the above named Defendant and Appellant in the above entitled cause, and find that the same constitutes the testimony, the statement of all the evidence introduced and offered upon the trial of the cause, motions and exceptions thereto, and of the whole case and exceptions thereto, and I hereby approve the said bill of exceptions as proposed.

Attorneys for Plaintiff.

123 *Copy of Exhibit "A" for Plaintiff.*

Translation of the Decision of the Supreme Court of Porto Rico, in the Appeal Taken by the Representative of the People of Porto Rico, Against the Judgment Rendered by the District Court of San Juan in the Case of Pierre Emmanuel, Baron de Laurens d'Oiselay, for the Recovery of Lands.

In the city of San Juan, Porto Rico, on the 22nd day of June, 1904, in the cause entertained by the District Court of San Juan between the parties Mr. Pierre Emmanuel, Baron de Laurens d'Oiselay on one side, and The People of Porto Rico on the other, for the recovery of lands, which cause is pending before us by virtue of a writ of error sued out by the party defendant who has been represented by the Fiscal of this Supreme Court, the appellee being represented by the Attorney Eduardo Acuña, Esq.

It appears that on January 30, 1901, Mr. Pierre Emmanuel, Baron de Laurens d'Oiselay, filed a complaint against the Treasurer of this Island before the District Court of San Juan, alleging the following, to wit:

That the King of Spain, Don Carlos III, in 1776 made a concession of four leagues of land to the Duque of Mahon, which donation was confirmed in 1792 by King Carlos IV, said amount of land having been reduced later on to 83 4 5 "caballerias," which were selected from lands on the towns of Naguabo, Fajardo, Luquille, Loiza, Isabela, and Pepino, but several years having elapsed without possession of the land being given by means of the proper survey, there arose several claims, the outcome of which was that there were designated as belonging to the Duque de Mahon 45 2 3 caballerias in the ward of Cibao, jurisdiction of the town of Pepino, today Lares which lands were surveyed and delivered to the Duke; that said land due to gradual changes suffered during the time elapsed, has been
121 actually reduced to 4,133 cuerdas of land, equivalent to 1,624 hectareas 43 areas and 3 centiares, situated in the wards of Callejones and Piletas, jurisdiction of Lares, judicial district of Aguadilla, planted with coffee and pasture, and the rest uncultivated, and bounded on the north with lands of Don Jose Gregorio Velez, on the South with lands of Don Miguel Jesus Colon, on the East by the river Camuy, and on the West by lands of Don Juan José Lopez, under the points and bearings specified in the complaint; that the government of the Island deeming that the representatives of the Duke of Mahon were not complying with the conditions regarding improvements of the lands to which he was bound, the Board of Unimproved Lands (Junta de Terrenos Baldios) considered the matter, and said Board resolved on June 3, 1854, that the lands granted to the Duke of Mahon should revert to the Crown of Spain, and later on, by a decision of the same Board under date of December 22 of the above mentioned year, the lands at Lares were delivered to 74 parties who had been in possession of them, each one of said parties being formally put in possession of the share appor-

tioned to him; that the succession or Estate of the Duke of Mahon, represented by the minor Doña Maria Balbo Bertone de Crillon, who being a minor was represented by the Count Manfredo Balbi Bertone de Sambuy, presented a petition to the Queen of Spain, asking for a year's time in which to be put in full possession of the lands afore mentioned in order to clear and cultivate them, leaving without effect in the meanwhile the decisions of the Board of Distribution of Lands (Junta de Repartimiento de Tierras), and that in answer to said petition two Royal Orders were issued, the first one dated April 8, 1857 by which the Governor of Porto Rico was required to report to the Queen as to the status of the matter and inform as to the best manner of harmonizing if possible, the interests of the Duke's family and those of the Island's agriculture, and to stay the effects of the notice given to the heirs of the Duke
125 until the Queen should finally decide the matter, and by no means to adjudicate to new grantees the lands referred to; and the second Royal Order, of January 20, 1859, ordered the Governor to give every protection and necessary facilities to the Duke's heir in order that she might take all the steps necessary for the recovery of the lands; that at a session held on the 25th of October, 1857, the Board of Unimproved Lands (Junta de Terrenos Baldios) it was decided to forward the data to the Vocal Auditor de Guerra whom they appointed to draft the minutes of the report to be made in compliance with the Queen's orders; that on April 7, 1859, the Governor and Captain General of this Island taking into consideration the previous history of the case and deeming it that the Government at Madrid considered that the grant made to the Duke of Mahon was not simply a gift, but rather a remuneration for services rendered by him to the Nation, and taking into consideration besides, that the heiress of the Duke was a minor, decided with the concurrence of the Auditor de Guerra, that as soon as the Count of Sambuy should reach the jurisdiction, he should be put into possession anew of the lands which had been adjudicated to the Duke of Mahon according to the maps and documents which he might produce; that the data and documents referring to this act of putting into possession which were in the Archives of the General Government, have not been found, due to the fact that said Archives no longer exist, but it is an undeniable fact that possession was given in compliance with orders of the Government, because in the copy-book of the official correspondence of the "Ayuntaniento de Lares" (Municipal Council of Lares) corresponding to the year 1859, there appears a communication in which the Mayor states that he
126 forwards to the Governor the proceedings instituted in said Municipality relative to the possession given to the heirs of the Duke of Mahon, of the amount of 20 2 3 caballerias of land in the Cibao ward of that jurisdiction, this being done by virtue of the communication of the Government dated April 7, heading the proceedings; that said possession is furthermore confirmed or proved by the payment of taxes by the Duke's succession from 1862 until the fiscal year 1898-1899 without break; that while matters were in this condition Don Virgilio Acevedo being anxious to secure the

ownership of the lands pertaining to the Duke's succession, began to incite the "colonos" not to pay the rents which they had been paying to said succession, under the pretext that said succession had lost the dominion rights thereto; and he succeeded in securing from said tenants a deed of sale of said lands, which was drawn on June 5, 1900, before the Notary of Lares, assuming that the "colonos" were the owners by right of concession made to them in 1854, which was false since the grantees of that concession had been dispossessed of the rights acquired, and if they had continued to be on the land, it was as "colonos," as is demonstrated by the fact that they paid rent to the Succession or Estate of the Duke of Mahon, and it was this Estate or Succession by whom the taxes were paid; that with such a deed Acevedo appeared before the Council (Alcaldia) at Lares, asking that the name of the Duke's Succession be stricken out from the Assessment Rolls, and his petition having been referred to the Honorable Treasurer, this official resolved on September 1, 1900, ordering that the Duchess of Mahon's name be taken from the assessment rolls and in her place the colonos be made to appear, each with the number of acres in his possession, and giving the class of land, in accordance with the Cartilla Guia (Tax Book) and that a certificate of said decision be forwarded to the Registrar of
127 Property in order that the inscription on behalf of Acevedo should not take effect, and requiring the landholders (terratenientes) to turn over their titles of concession of the land in their possession, as a consequence of which the lands belonging to the Succession of the Duke of Mahon were inscribed in the Registry of Property as being the property of the People of Porto Rico, by virtue of an order of said Treasurer; that the Baron de Laurens was obliged to come to this Island as heir of the Duchess of Mahon, to defend his rights, and having produced the documents proving his rights to the Honorable Treasurer, the latter recognized that among said documents there were Royal Orders and decisions of the General Government of Porto Rico, which if authentic, would indicate that the reversion of the land had been suspended and the representatives of the Succession of the Duchess of Mahon put in possession; but that the authenticity of said documents was matter to be decided by the competent court as well as to whether the Succession had complied with the requirements and conditions of the Orders by which the reversion was suspended, although the Treasurer does not hesitate to state that, if such orders and dispositions had been properly recorded the action taken by his Office would not have occurred, and that in his opinion said documents constituted a very important proof in relation to the question itself and its issues; The party plaintiff alleges as principle of law (fundemento de derecho) that the exhibits attached to the complaint substitute a perfect dominion title in favor of the Duchess of Mahon and of her present heir; that the identity of the lands and those registered in favor of The People of Porto Rico is proven by the wordings of the Treasurer's communication ordering the inscription; and that the owner of immovable property has a right to claim it from the party in whose possession might happen to be and to request that the inscription made of said property

in the Registry be annulled; and exercising his dominion
128 rights, he ends requesting that judgment be given adjudging plaintiff to be the owner of the lands referred to, cancelling the inscription made in the name of the People of Porto Rico, and substituting one in favor of plaintiff; and

Whereas, the complaint is accompanied by the following exhibits, to wit:

I. Copy of the holographic will made by Madame de Crillon, Duchess of Mahon, under date of September 16, 1889, leaving to Mr. Pierre du Laurens, Cavalry Officer, the lands in Lares, situate in Porto Rico, which lands are entailed; leaving besides the title of Duke of Mahon and Grandes of Spain to Mr. Louis des Balbos de Berton de Sambuy;

II. Certificate of death of Madame Gabrielle Antoinette de Bartone de Balbo de Crillon de Mahon, at Avignon, France, on the 11th of April, 1899;

III. Copy of the petition presented to the Governor and Captain General of Porto Rico on the 26th day of November 1828, by Mr. José Javier de Aranzamendi as the representative of the Duke of Mahon Crillon, requesting that after due survey and previous summoning to be present thereat to the adjoining landowners, he be given possession of the 45 2/3 caballerias of land which were still lacking to complete the amount granted to the Duke by Royal Order, giving notice to that purpose to the proper officers (Tenientes á Guerra) of the jurisdiction of Pepino, Isabela, and Loiza, where there still existed unimproved or crown lands, and that there be issued to him the deed of property, legitimate ownership, protection and safety;

IV. Copy of the Decree of the Governor General, dated on the 29th of November of the year above given, authorizing the proper authorities (Tenientes á Guerra) of Loiza, Isabela and Pepino to cause a survey to be made by a Surveyor, citing the abutting
129 owners, of the public lands which the representative of the Duke of Mahon Crillon claimed existed in the respective districts referred to bearing in mind that according to the statement of said Duke there existed in the District of Pepino 20 and 2/3 caballerias;

V. Copy of the Decree of April 14 of the following year, of the "Teniente á Guerra" of Pepino, ordering the survey of the 20 2/3 caballerias of land, summoning the adjoining property-owners by virtue of the Order of the Governor and Captain General;

VI. Copy of the survey proceedings made after having duly summoned the adjoining landowners and fixing the metes and bounds, bearings and distances, which act took place on the 22nd day of the above mentioned month of April;

VII. Copy of the deed of safety (Titulo de Amparo) issued to the Duke of Mahon Crillon by the Captain General Don Miguel de la Torre under date of March 10, 1830, of the 20 2/3 caballerias which had been surveyed in the district of Pepino, giving the same boundaries and bearings specified in the survey proceedings above referred to, which said deed of safety is issued to the Duque de

Mahon for his use, benefit and possession of the lands referred to, and as real owner thereof, he to cultivate the land in the manner and form he might deem best, no one else at that time or at any other time having the right to disturb him in the possession and ownership of said lands;

VIII. Certificates of various "Actas" or proceedings of the Superior Board of Award of Unimproved Lands, no longer in existence, from which proceedings it appears that at a session held in April, 1854, said Board, taking into consideration the Royal Order referring to unimproved lands owned in this Island by the Duke of Mahon-Crillon and in view of the reports made by the local Boards of the towns of Rio Grande and Lares, wherein it is to be seen that the Succession of the Duke had owned in the jurisdiction of the above mentioned town a number of caballerias of land, without stating the amount, and in the jurisdiction of the other
130 town owned 20 2 3 caballerias, stating in both reports not only that nothing had been done toward cultivating the lands, but that there was no one in charge of paying taxes thereon; and in view of these reports the Board declares the lands "unimproved" and authorized the Vocal Auditor de Guerra to advertise them as such in order to apportion said lands to the people who might ask for it, proper notice of said decision of the Board to be communicated to the Queen; that at another session of the same Board, at the request of the Municipality of Lares, which request dealt upon the advisability of granting to 74 parties residents of said town—list of whose names the Municipal Board of Lares forwarded, together with the amount of land in possession of each of them, which land had belonged to the Duke of Mahon Crillon,—the Board decided to give said lands to those who were in possession of it, limiting the concession to 100 acres of land, it being necessary for each person to secure in the term of two months the corresponding order for the survey of the land and to pay the taxes imposed thereon; it having also been agreed by the Board to make grants from among the lands of the Duke of Mahon situate in the jurisdiction of Lares and Rio Grande, to 34 parties specified in the above mentioned certificate; and finally that at a session held on the 25th of October, 1857, notice was given of the two Royal Orders dated March 18 and April 8 of that same year, the first of said Royal Orders being accompanied by the report addressed to the Minister of State of Spain by Berton de Sambuy, Esq., guardian of the young girl heir to the Duke of Mahon, in regard to the lands that King Carlos III and King Carlos IV granted to the first Duke of that name, and attaching to the second Royal Order a petition from the said guardian addressed to the Queen, the purpose
131 of which, as well as that of the report was to secure an extension of time for the reversion to the Estate of the lands referred to; the Queen requesting in said Order that she be informed as to the previous history and actual condition of the affair, and asking for a report as to the manner of harmonizing if possible, the interests of the Duke's family with the agricultural interests of

this Island, and that until the Queen should finally pass upon the matter to suspend the effects of the notice given to the Duke's heirs through the French Consul, without in any way adjudicating in the meantime to new grantees the lands not cultivated to which the above-mentioned Royal Order and the petition accompanying same refer; The Board above-mentioned agreed to forward the data and the Royal Decrees previously mentioned to the Vocal Auditor de Guerra, he to draft the minutes of the report to be forwarded to the Queen;

IX. Copy of the petition of Barton de Sambuy, Esq., forwarded to the Queen of Spain under date of April 1, 1857, which petition brought about the already described Royal Order of April the 8th, and in which said petition the Count Manfredo Balbo Berton de Sambuy, representing Doña Maria Balbo Bertine de Crillon, heir to the Duke of Mahon, stated that he had received through slow and indirect channels the notice given to the French Consul in this Island by the President of the Board of Award of Lands, in which notice it was stated that, at a meeting held May 24, 1856, in view of the Royal Decree of September 15, 1852, which declares that the 27 caballerias of land situate in Rio Grande had reverted to the Crown, and of the Decree of December 13th, 1854, dictated by virtue of the last complaint made by the family of the Duke of Mahon, that said family be notified that if they desired to keep some of the lands granted to them at Naguabo, Fajardo and other places they should immediately appoint a representative to present the
132 survey and boundaries of said lands and to put said lands under cultivation within the term of one year as required by the Circular dated April 23, 1856, and to pay the taxes; because otherwise the lands would again become Crown lands, ending with the request that they be given a year's time, beginning from the date in which his ward the minor heir, should become of age, to take full possession of the lands referred to and to clean and cultivate the same, declaring void and null in the meantime the decisions of the Board of Land Grants (Junta de Repartimiento de Tierras) of this Island and ordering that the aforesaid 27 caballerias of land be given back, if the reversion thereof had already been declared, and in case that by due provisions of the Board or by legal decisions, any part of said land should belong to other legal owners who cannot be dispossessed of them, that it be ordered that in place of these lands there be assigned to the family of the Duke of Mahon other lands, equivalent and situated under the same conditions indicated in the Royal Grant of July 4, and September 25, 1776.

X. Simple copy of the Royal Order of April 3, 1857, issued by virtue of the preceding petition, which Royal Order contains the requests made above.

XI. Simple copy of the Royal Order of January 20, 1859, in which the Queen of Spain orders the Governor General of this Island to lend to Count Manfredo Berton de Sambuy all the protection and facilities which he deserves on account of his rank, for the

recovery of the lands inherited by his daughter-in-law and ward Miss Maria Berton de Crillon, Duchess of Mahon and Grandee of Spain of the first class.

XII. Communication of Governor General Cotoner dated May 7, 1859, addressed to Count Manfredo Bertone de Sambuy, quoting the Decree of the General Government, dated the 7th of April, last

133 in accordance with the report of the Auditor de Cuerra, in which Decree it is ordered that the representatives of the Duke of Mahon be put in possession anew of the lands which had been taken away from them, in accordance with the boundaries given by the maps and documents which said representatives might produce, protecting the rights of those who may be in actual possession either in part or in whole, which rights should be ascertained before a competent authority and in due legal manner; her Majesty to be notified. This Decree being issued by virtue of proceedings instituted by Count Manfredo Berton de Sambuy as the guardian of the Estate of the Duke of Mahon Crillon, for the purpose of being put into possession of the lands owned in this Island.

XIII. Simple copy of the Order addressed to the local authorities at Faiardo, Naguabo, Luquillo, Ceiba, Lares, Isabela, and Rio Grande under date of April 7, 1859, notifying them of the Decree of the same date, for the compliance thereof.

XIV. Certified copy issued by the Secretary of the Council of Lares, of a communication found in the copy-book of the correspondence belonging to the year 1859, which communication reads as follows: "Honorable Sir:—I have the honor to forward to your superior authority the proceedings had in this Council regarding the act of giving possession to the Count of Sambuy as legal representative of the Estate of the Hon. Duke of Mahon Crillon, of 20-2-3 caballerias of land in the Cibaos Ward of this jurisdiction, the same being done by virtue of orders given by Your Honor under date of April 7th ultimo, which orders heads said proceedings. Lares, June 4, 1859."

XV. Certified copy of the communication from the Treasurer addressed under date of September 4, 1900, to the Mayor of Lares, and which, literally copied, is as follows: "In view of the decision taken by the Council at its extraordinary session held on the 27th of August ultimo, copy of which was forwarded by you to-

134 gether with your communication of the 1st instant, because of August ultimo, copy of which was forwarded by you to-

nandez, asking that the name of the Duchess of Mahon Crillon be stricken from the public assessment rolls for Insular taxes for the year 1900-1901 placing therein instead the name of said Acevedo as grantee of the lands situate in that municipal jurisdiction purporting to belong to said Duchess of Mahon, which lands he secured from the legitimate owners, that is to say: the rights and actions over said lands had by the colonos who had been in peaceable possession of the same.

In view of the complaint or appeal made (Escrito de Alzada) by Mr. Virgilio Acevedo against the above mentioned action of the

Municipality in referring the matter with data appertaining thereto to the Treasurer's Office, for such action as may be pertinent; In View of said facts, and it appearing:

1st. That since 1776 there were granted to the Duke of Mahon Crillon 27, caballerias making 5,400 cuerdas, at Rio Grande and Lares, which have not been cultivated by him nor has he enjoyed the usufruct thereof, as per the Circular of the Governor and Captain General published in the Gazette #7, on June 6, 1854;

2nd. That by Royal Order dated September 15, 1852, there was declared it was a case for the reversion to the Crown, of said lands not improved or cultivated by the grantee, in the towns of Rio Grande and Lares, and ordering the institution of proceedings for that purpose;

3rd. That the Superior Board of Unimproved Lands decided to declare reverted to the State the lands mentioned, deciding also that notice to that effect be given to the public so that those persons enjoying the conditions required by law might ask for said lands, should they so desire:

135 4th. That the Council of Lares by a Decree dated August, 1854, grants the use of the lands referred to to those who had been in possession thereof, but without giving ownership or possessory right thereto;

5th. That on December 27 of the same year the Board of Lands granted the lands which had reverted to the State, to those who were enjoying the usufruct of said lands, with the condition that no one was to have over 100 cuerdas and with the obligation that within the term of two months they were to get the necessary permit to survey, paying the taxes established; although there is no record that the above described conditions were complied with;

6th. That the tenants, all or some of them, by a public deed executed in Lares before the Acting Notary Mr. Salvador Picornell Cardona, on the 5th of July of the present year transferred in favor of Mr. Virgilio Acevedo y Hernandez all the rights and actions which might belong to them over the lands referred to, situate in the wards of Callejones and Piletas of that Municipal District, having a total area of 4,133 cuerdas, equivalent to 1,624 hectares, 43 areas and 13 centiares, bounded by uncultivated public lands, and by those of José Gregorio Velez, José Miguel Colon, Juan José Lopez and the Camuy River; and

Whereas, 1: The lands which were granted since 1776 to the Duke of Mahon Crillon belong to the State, now the Insular Treasury of Porto Rico, since said lands reverted to it by decision of the Board and no one else has any right to them except the Insular Treasury;

2. That although these lands were granted by the Board to the 74 colonos, the proceeding was not finished because the colonos did not comply with the prescribed conditions;

3. That the Duchess of Mahon Crillon should not have appeared in the past nor in the present, in the assessment rolls and

136 those putting her name therein without competent authorization will be held responsible for the results;

4th. That neither can the colonists cede or transfer that which is not theirs, the deed of transfer in favor of Mr. Virgilio Acevedo being, therefore, null and void;

Therefore, it is hereby ordered:

1st. That the Duchess of Mahon Crillon be immediately stricken from the assessment rolls and instead that there be made to appear the colonists, one by one, with the number of cuerdas of land owned by each, class of lands and other requisites of the Cartilla Guia (Assessment Book);

2nd. That there be forwarded to the Registrar of Property certified copy of this decision so that the inscription in favor of Mr. Virgilio Acevedo as to the transfer to which the above mentioned public deed refers be not made.

3rd. That all the colonists turn over to the Mayor's Office proper receipt being given therefor, the titles of concession which each might possess and entitles them to the usufruct of the lands, which papers you will forward with a duplicate receipt, to the Treasurer's Office to be added to the record and for other such purposes; or a negative certificate.

4th. All of which I notify to you for your information and that of the Municipal Council, Mr. Virgilio Acevedo, and the colonists, who are to be notified in due legal manner, copy of the proceedings as to these notices to be also forwarded for such purpose as may be necessary.

XVI. Certificate issued by the Mayor and Secretary of the Council at Lares as to the taxes paid by the Duke of Mahon Crillon, by said Duke's Succession or by the Duchess of Mahon Crillon since the year 1862 to 1899; and

XVII. Letter addressed by the Honorable Treasurer under date of January 4, 1901, to Baron du Laurens d'Oiselay, wherein he makes the statements which it is alleged said Treasurer set
137 out in the complaint.

It appearing that the Fiscal of this Supreme Court, representing the Treasurer of Porto Rico, in his answer to the complaint alleged as dilatory plea the lack of personality of the plaintiff, setting as ground for such plea, that King Charles III having granted to Don Luis Balbo Bertine, Duke of Crillon, in payment for his services to the Spanish Crown, the title of Duke of Mahon and Grandes of Spain of the First-Class by Royal Decree dated March, 1872, and May 13, 1783, as such a high position required the creation of an entailment (Mayorazgo) which would forever be joined to the title of Grandee, the Duke of Mahon set aside to constitute such entailment, one of the four square leagues of land that said King Charles III had granted to him in this Island; that part of the lands granted to Duke of Crillion having been entailed as an annex to the title of Duke and Grandee of Spain, such part of the lands must have descended from one to another of those in possession of the Mayorazgo (direct heir regardless of sex) until the time when there were published in Spain the laws abolishing entails upon property, that is to say: the laws of October 11, 1820, May 15 and June 28, 1821, June 9, 1835, and August 19, 1841, prohibiting the creation of

entails and freeing all property which was then entailed upon those owning the title of Mayorazgo, but reserving half of the property so entailed for the immediate successor; that plaintiff does not state whether he makes his complaint in his capacity of "Mayorazgo" or in his capacity as heir; but that in the first case he should have proved the existence of the "Mayorazgo" and even then he is bound
to prove by the necessary written proof that the lands in ques-
138 tion not only as to the part of it entailed, but as to the part reserved to the possessor, have come down strictly in the order of direct legal inheritance, or through testamentary disposition; that it does not appear from the complaint in what capacity or by what right he claims, as required by No. 2, Article 532 of the Code of Civil Procedure; that the plea should be sustained and the complaint dismissed.

It appearing that the defendant also put in the peremptory plea of lack of action, giving as ground therefor that, notwithstanding the concession made to the Duke of Crillon by King Charles III of Spain by Royal Decree dated July 4, and September 25, 1776, of four leagues of land in this Island, no possession of said land was given, not even the place in the Island where said lands were located being designated, on which account in 1837 the representatives of the Duke's family were still making claims in that respect; that as the grantees had not complied with the conditions prescribed, of clearing and cultivating the land, the Government of this Island so notified the Government of Spain, and the outcome was the Royal Order of September 15, 1852, copy of which accompanied the complaint, and in compliance with this Order the Board of Unimproved Lands declared that the lands granted to the Duke of Mahon Crillon had reverted to the Crown, for which purpose there was issued under date of July 3, 1854, the Circular #77, published in the Official Gazette; that on December 27 of the same year, the Board of Unimproved Lands granted the lands which had reverted to the crown, to those persons who had been in possession of the same, with the condition that no one of them was to have over 100 cuerdas, and under the obligation that within the term of two months they must secure the requisite permit for the survey, paying the tax imposed; there being no record of these conditions having been complied with;
that the Succession of the Duke of Mahon Crillon having no
139 legal representative in this Island, the decision and order above-mentioned were notified to said Succession through the French Consul, and then Count Manfredo Balbo de Sambuy in his capacity of guardian and father-in-law of young Doña Maria Balbo Berton de Crillon, Duchess of Mahon and heir to the title of Grandee of Spain, under date of April 1, 1857, presented a written petition, copy of which petition accompanied the complaint, and which petition brought about the Royal Order of April 8 of the same year, copy of which Royal Order was also introduced by the party plaintiff; that when Count Manfredo Bertone de Sambuy came over to this Island for the purpose of settling the rights which might belong to his ward and daughter-in-law the Duchess of Mahon, there was given to him by Royal Decree dated January 20, 1859, an official

recommendation addressed to the Government of this Island, to the effect that there be afforded to him all the facilities deserved by his rank, as expressed in the copy of said Royal Order which accompanies the complaint; that once in this Island Count Manfredo Bertone de Sambuy went to the Supreme Authority of the same, represented at that time by Lieutenant-Governor Medivilla, who, going beyond his authority, by a Decree dated April 7, 1859, ordered that the Duke's representative be put in possession of the lands adjudicated to said Duke, in conformity with the boundaries indicated in the maps and documents which might be produced by said representatives, protecting the rights of those in possession of the land, and ordering that notice be forwarded to the Queen as to this decision; that there is no record that such possession was given, the only thing referring to it extant being the communication of the Mayor of Lares, dated June 4, 1859, referred to in the complaint; that though it appears that the Succession of the Duke of Mahon has paid taxes to the Municipality of Lares, that fact is not sufli-
140 cient to prove the right of ownership, because it is only a requisite which is useful only in connection with others to prove possession of the property, without prejudice to third parties; that neither before nor after the year 1859 did the family of the Duke of Mahon Crillon comply with the conditions prescribed of clearing and cultivating the lands granted to him on 1776; that on June 5, 1900, by public deed, the great majority of those who without proper title thereto were in possession of the lands in controversy, conveyed their alleged rights to Mr Virgilio Acevedo Hernandez, who requested the City Council of Lares to strike out the Succession of the Duke of Mahon from the assessment rolls placing him there instead, and this request having been referred to the Treasurer of Porto Rico, the latter rendered a decision on September 1, 1900, copy of which accompanied the complaint. The party defendant alleged as a principle of law, that the Captain General in issuing his Decree of April 7, 1859, has exceeded his authority, which should have been limited to carrying out the Royal Order of April 8, 1857, leaving the decision of the matter to the Queen of Spain, which sovereign did not authorize him (the Captain General) in the Royal Order of the 20th of May, 1859, to order the giving of possession ordered by the Decree of April 7, 1859; that the payment of taxes does not constitute or prove dominion (full ownership) that neither the Duke of Crillon and of Mahon, nor his heirs have complied with the conditions of clearing and cultivating the land granted to him by the Crown of Spain, and that, therefore, they have not secured full ownership (dominion) of said lands that real actions prescribe within 30 years, when said action is in regard to immovable property, in accordance with Article 1963 of the Civil Code; and that by virtue of the Treaty of Peace between the United States of America and the Kingdom of Spain, the United States acquired this Island with all the buildings, public ways and other immovable property, which in accordance with law belonged
141 to the public domain, and previously belonged to the Spanish Crown, the Organic Law of Porto Rico having made no pro-

vision in regard to such property for its transmission to the People of Porto Rico, for which reasons they must be considered as public domain of the Government of the United States, according to Articles 2 and 8 of the Treaty of Paris, and Section 13 of the Organic Law of Porto Rico, it being the right today of the Supreme Government of the United States to do that which was left undone by the Queen of Spain, that is to say: to render the final decision which she reserved to herself by the above referred to Royal Order of April 8, 1857; and counsel for the defendant ended by praying that there should be first considered the dilatory plea for lack of personality in the plaintiff, and in default thereof that there be considered the lack of action, and that on account of this principle of law, the complaint be dismissed with the costs against the plaintiff, adjudging in the latter case that the claims of the plaintiff must be presented to the Supreme Government of the United States, who is the one competent to finally adjudicate them.

It appearing, that the trial and the taking of proof having begun there were introduced as part of the record, at plaintiff's request, copy of the certificate issued by the Treasurer of Porto Rico under date of September 14, 1900, to have registered in the Registry of Property in favor of the People of Porto Rico, the 1,133 Cuerdas of land, situate in the wards of Callejona and Piletas, of Lares, judicial district of Aguadilla, containing coffee plantations, pasture and briers, with the boundaries described in the deed executed in favor of Mr. Virgilio Acevedo y Hernandez under date of July 5, 1900, and the metes and bounds specified in the title of protection (Titulo de Amparo) which under date of March 10, 1839, was issued
142 in favor of the Duke of Mahon Crillon, it being noticeable that in said certificate it is stated that the lands referred to belong by right of ownership (titulo dominical) to the People of Porto Rico; because if it be true that in the year 1776 said lands were granted to the Duke of Mahon Crillon, the latter not having cultivated them, they had reverted to the State as per the decision of the Board of Unimproved land about the year 1854 in compliance with Royal Order dated September 15, 1852, this inscription of ownership having been inscribed in the Registry of *Property of Aguadilla under date of September 14, 1900.*

It appearing that although upon motion of plaintiff there was sent to the Secretary of Porto Rico a communication, asking that upon examination of the Records delivered by the Spanish Government, certificate be issued of the letter addressed by the Mayor of Lares under date of June 1, 1859, addressed to the General Government of the Island reporting that he had put in possession of the lands at Lares the representative of the Succession of the Duke of Mahon Crillon, and of other previous data relating to said communication; this proof was not taken because the Index of the proceedings forwarded to the Congressional Library at Washington in 289 boxes containing 224 parcels (legajos) referred to so many different subjects, and they were in such confusion, that it was impossible to secure the proof desired.

It appearing that the party defendant having tendered as proof

the request that there should be asked for from the General Records of this Island, the official text or authenticated copy of the Royal Order of Concession of March 30, 1772, and May 13, 1783, of the Royal Orders of July 1 and September 25, 1776, of the Royal Decree of September 15, 1852, of the Royal Orders of April 8, and
143 January 20, 1857, and of the Circulars of the Board of Unimproved Lands, dated July 3 and December 27, 1851; there were only sent back the Books of the Board of Unimproved Lands from September 1, 1845, to September 19, 1865, and from 1866 to 1873; a copy of the Circular of June 3, 1851, by which there reverted to the Crown of Spain the lands granted to the Duke of Mahon Crillon because of non-compliance of the conditions prescribed; a copy of the minutes of the notice given to the heirs of the Duke of Mahon Crillon through the French Consul in this Island, under date of June 7, 1856, which notice literally copied says:

"Communication to the French Consul in this Island." "The Board of Allotment and Distribution of Unimproved Lands of this Island after examining the proceedings regarding the grant made by King Carlos III and King Carlos IV to the Duke of Crillon; the Royal Order of September 15, 52 declaring that action should be taken for the reversion of the 27 caballerias which unused for and uncultivated by the Grantee were situated at Rio Grande and Loiza; the proceedings which brought about the above decision or order; and finally, the Royal Order of December 12, 50, which brought about the claim lately made by the Succession of the Honorable Duke, has decided at a meeting thereof to notify the Succession, through your Honor, that if it still believes that it owns some lands of those which were granted to it in Pajardo, Naguabo, or some other point, that it should appoint a representative who may exhibit the records of the survey and boundaries of said lands and who will improve them within the term of a year in a manner prescribed by the Circular, copy of which is hereto attached, paying the royal taxes, in which event the rights the Succession may have will be considered; but otherwise they will be declared as having reverted, in accordance with said Circular. By virtue of this decision and
in order that the Succession of the Honorable Duke might
144 not deem itself unattended, notwithstanding that the principle, that authorities should address each and every party who might be affected by their decisions in untenable, I notify it to your Honor, for the purpose stated. God etc. June 7, 1856. To the French Consul in this Island." And finally, copy of a communication of the President of the Superior Board of Unimproved Lands addressed to the Government of this Island, dated March 31, 1869, and of another communication from the President of the Council of Administration (Consejo de Administracion) dated June 14 of the same year, both of said documents relating to a petition addressed under date of July 25, 1865, to the Governor himself, by the Count of Sanbuy, representative of the Duchess of Mahon Crillon, and accompanied by various documents to be kept by the Government, so that the competent authorities might watch over

the concession made by King Carlos III and the creation of the title of Duke of Mahon, Conqueror of Menorca.

It appearing that during the trial of the cause counsel for the plaintiff and the Fiscal were heard in regard to the dilatory plea made by the latter as to the lack of personality in the plaintiff, which plea was overruled, arguments having then been heard as to the merits of the case to the extent which the respective parties deemed necessary on behalf of their contention.

It appearing that the District Court of San Juan by a majority of votes gave judgment under date of August 1st, 1902, sustaining the complaint and adjudging that the lands situate lately in the jurisdiction of Pepino (now in Lares) to which the certificate issued by the Honorable Treasurer of this Island, dated September 11, 1900, refers,—by virtue of which certificate the 1,133 cuerdas of land referred to therein were inscribed by order of the above
145 mentioned Treasurer at belonging to The People of Porto Rico at folio 51 of Tomo 28 of the Council of Lares, property No. 1677, Registration 1st, in the Registry of Property of Arecibo under date of September 16 of said year 1900—belong to complainant and ordering that said lands be left at the disposal of the plaintiff and that the said inscription be cancelled, without making any special provisions as to costs.

It appearing that the representative of the defendant sued out a writ of error against this judgment because of alleged error in the procedure and infraction of the law, which writ was granted, and the record having been sent to the Supreme Court, after due citation and notice to the parties, said writ of error was seen as an appeal by virtue of the Provisions of the Law of the Legislative Assembly of March 12, of last year, which changed the then Court of Appeals into the present Supreme Court, both sides having presented in writing all the arguments they regarded necessary as a defense of their respective rights the trial was then had, counsel for both the appellee and the appellant being present thereat.

Opinion by Hon. José Ma. Figueras y Chiques, Associate Justice of the Supreme Court. It appearing that proper procedure advises us to analyze in the first instance the pleas filed by the defendant, against the complaint as to the subject matter of ownership, both in the answer to the complaint proper and on the writ of error. It appearing that the first point raised for our study and consideration is the dilatory plea as to the lack of personality alleged by the "Fiscal" representing the People of Porto Rico in answer to the complaint, giving as ground therefor, that the party plaintiff should have duly proved his entity and in what capacity he appears, the "Fiscal" claiming that if plaintiff appears as "Mayorazgo" (heir by right of primogeniture) there is lacking proof of the exist-
146 ence of the same, said proof being the charter creating the "Mayorazgo," and that if plaintiffs appears as having inherited the land, there should have been proved by means of such papers and documents as may be proper, that the lands claimed have come down in strict order of succession or through a will in accordance with law, to belong to the party plaintiff. It appearing that in this

suit there is nothing relating to "Mayorazgos" nor does the question raised relate to any dispute among parties over the enjoyment of the benefits of an entail; but even were this the case, there would always appear that the deficiencies pointed out by the Fiscal refer to the absence of the documents in which plaintiff would base in such event his rights to the thing claimed, and this being *sine actionem agis* would affect the subject matter of the complaint (Article 503 of the Law of Civil Procedure), from which it appears that the party defendant has confused the lack of action with the lack of personality to which No. 2 of Article 502 and 532 of the above mentioned Law of Civil Procedure refers to.

It appearing that plaintiff has fulfilled both of said legal provisions since claiming his rights as legatee of the Duchess of Mahon Crillon he has proved his rights as such by the will of said lady and by the certificate of her death, from which the right to appear as plaintiff is made perfectly clear, a right which, on the other hand, is acknowledged beforehand by the Administration and which today its representative cannot legally disavow.

It appearing that the second point to be considered is the question submitted by the Fiscal in the following words: "That only to the President of the United States of America, or in his place the Governor of Porto Rico," belongs the decision left undecided by the Queen of Spain." It appears, however, that an important point has been lost sight of, and that is, that this is not a question
147 as to a decision of an Administrative character granting or denying lands belonging to either one of the two political entities above cited, for which purpose it is clear that this Supreme Court would have no jurisdiction, but that the matter under consideration deals with a deed of protection (título de amparo) for lands, which title constitutes a title of ownership which dates not less than from the 10th of March, 1830, strengthened by the Decree of April 7, 1859; and in this suit the matter in controversy is as to whether this ownership still obtains through all the lapse of time, and if by acts and doings contrary to law, the party plaintiff has been dispossessed of each and every right which such ownership gives him. It is clear that the Supreme Court is acting within its sphere in taking cognizance of, and deciding whether there has been a violation of said property rights, a matter which has at all times been within the scope of jurisdiction of ordinary tribunals. It appearing that these same principles are held by the wise Constitution of the United States when it guarantees in Article 5 thereof to private citizens the right that no one shall be dispossed of his property without due process of law, and this, as it is natural, must be done before the proper judicial authorities, whose jurisdiction must be recognized and respected when, as in the present instance it refers to the question of ownership. It appearing that arriving now at the true and only issue which remains to be decided which is whether each and every one of the indispensable requisites of the law on which the action for the revindication of lands comes in for review have been proved, which requisites are in the first place full ownership (dominion) and in the second place identification of

the property which it seeks to revindicate. It appearing that
148 on entering upon such a study one must rely, as it is proper, on the public documents issued by competent authority, which have been attached to this record in due legal time and which have not been rebutted as false, and on such proof as, with due notice to the opposite side, has been taken, leaving aside all data which can have been used only as a means of illustrating, without being a real proof of all the conditions prescribed by law. It appearing that it is a fact acknowledged by the Fiscal who represents the defendant, that lands were granted on this Island to the Duke of Crillon, later of Mahon, by virtue of Royal Grants dated July 4, and September 25, 1776, which grants were ratified by Royal Decree of July 19, 1792. It appearing that the plaintiff, Mr. Pierre Emmanuel Baron de Laureus d'Oiselay, has fully proved that the lands in controversy have been owned not only in the name of the Duke, but also in that of the Duchess whose heir he is, since the 22 of April, 1829, said ownership having been acknowledged by the Board itself in its minutes of the session held April 3, 1854, in which it declared unimproved (baldios) the lands in controversy but that plaintiff's right of ownership was good as per the title of "amparo" of the lands under considerations issued with full authority in that behalf by the Captain General Don Miguel de la Torre, in favor of th Duke of Mahon Crillon, on March 10, 1830. It appearing that the decision of the Board of Unimproved Lands rendered at the session of April 3, 1854, declaring as having reverted to the Crown the lands claimed in this litigation on the ground that they had been abandoned, cannot have the weight and importance which has been given to it in this suit, that is to say: of having wiped out the rights arising from the titles and Grants of which mention has been made, because said Board's decision was rendered with the under-
standing that the Queen should be notified, of which later
149 action there is no record, and because, it should be understood, said decision was made void by the Royal Order of April 8, 1857, issued at the request of the legal representatives of the Duke of Mahon, which sovereign Order commanded the suspension of the effects of the notice given as a consequence of the Board's decision, to the heirs of the Duke through the French Consul, and said Royal Order still goes further since it also orders that by no means shall there be adjudicated to new grantees the lands not yet cultivated, and all this was done under express command, until the Queen should finally pass upon this matter, which means that the decision of the Board of Unimproved Lands did not have the character of a final decision, it having been so construed by Captain General Cotoner who forwarded said Royal Order to the above-mentioned Board on the 21st day of July, 1857; that is to say, forwarded it to the very same authority who took the decision as to the reversion, as can be seen at folio 27-31 inclusive of the Record, wherein the request referred to and the copy of the above-cited Royal Order are to be found, and which documents must be considered authentic, nothing having been done to prove the contrary by the opposite party. It appearing that to strengthen the

belief that the often-referred-to decision of the Board did not produce any legal effect, there is added the Order of the Captain General of this Island, dated April 7, 1859, ordering to give possession anew to the Conde of Sambuy, as representative of the Succession of the Duke of Mahon, it being impossible to hold that this Order was not complied with, just because there has not been attached to this record the proceedings in which said act of possession was stated, since at folio 37 thereof there appears a certificate issued by Don Carlos Budet Texidor, Secretary of the City Council of Lares,
150 in which, referring to the correspondence-book for the year 1859 to be found in the records of that Municipality, copy is given of the minutes of the official communication dated June 4, 1859, transmitting the proceedings instituted by the City Council of said Municipality of Lares in regard to the possession given to the Count of Sandiat, in his capacity as representative of the estate, of the 20⅝ caballerias of land situate in the Cibao Ward of said Municipality. It appearing that if the original proceeding as to the possession given, which it is proved was transmitted to the Governor General, became lost in his office, and it has been impossible on that account to introduce it as proof in this cause, such an accident, which is beyond the power of the plaintiff to prevent, can not injure him in his rights when, as in the present cause, the fact of the giving of possession in compliance with the Governor's Order has been proved by that very copy of an old date, as to the authenticity of which no doubt can be entertained since it refers to Records of 1859 and because the certificate containing the copy of the minutes of the letter of transmittal of the proceedings regarding the giving of possession, done probably in due legal form, is issued by the Secretary and approved by the Acting Mayor of Lares and sealed with the Seal of said Council, all of which requisites tend to drive away any idea of falsity, because the Secretary who issued the certificate and who is in charge and has the care of said letter of transmittal, knew that he issued the same under his own responsibility as per Rule 1 of Article 596 of the Code of Civil Procedure. It appearing that this certificate containing copy of the minutes of the letter of transmittal of the proceeding regarding the possession given, has
151 the force of a public legal document, according to Number 4, Article 595 of the above-mentioned Code of Civil Procedure, because it is a copy taken and authorized by the Secretary in charge of the Records, under orders of competent authority, as the Mayor happens to be. It appearing, finally, that it is a custom kept for the purpose of preserving order in an office, and exactly for the purpose of providing against the loss of proceedings taken, to keep the minutes or copies of said proceedings, and in the present case, the keeping of such minutes or copies has preserved the record of an important proof in this suit, that is to say: the proof of possession given, an act which cannot be denied today, unless there be proved that the minutes or copy of the letter of transmittal is false, which has not been attempted, the existence of the original letter of transmittal itself not having been doubted. And this being so, it must be held that possession was given, because the often-times

referred-to certified copy of the letter of transmittal is proper proof in this suit, and because to deny the act of giving possession, and then to accept the authenticity of the copy of the letter of transmittal would be really incongruous. It appearing that the act of giving possession is strengthened by the fact admitted also by the Fiscal himself, as proof, that the Duke of Mahon or his Succession, or the Duchess of Mahon Crillon paid the taxes on said lands since the year 1862 to the year 1899, that is to say, for thirty-seven years, a circumstance from which presumption arises that said lands were under cultivation, because until the change of sovereignty and approval of the actual Revenue Law, under date of March, 1902, taxes were imposed on the basis of the income produced, and if there was no income because of lack of cultivation, of course they could not have been either imposed or paid. It appearing that this
152 suit, in which the action for revindication of land has been the basis, has been filed against the party who, according to the plaintiff, has committed the ill-legal act of dispossession, that is to say, against The People of Porto Rico which is the party appearing in the public office of the Registrar of Property as the deforciant of plaintiff's rights of ownership, there must not act against the success of the suit the fact that same was not brought against other parties who only appear by insinuation as being in possession of the land in question, because there is no record as to by what right they are in possession, and because it *is* might be possible for them to be in possession as colonos of the plaintiff; but any way they having been no part to this suit, the decision herein given can in no way injure them, their rights in any events being preserved against any prejudice or injury, since they can argue them by bringing suit to test their title, if any they have, and to test any other proofs which they might present. It appearing that by Royal Decree of April 17, 1884, the Regulation for the clearing of titles to Crown or public lands was approved, and Article Second thereof states: "Art. 2. There shall be considered as owners for the legal purposes of this Regulation those parties proving to have acquired the lands through a Royal Order, concession of the Superior Board for the Apportionment of Uncultivated Lands, or by title of competent authority, and who have complied with the conditions imposed by the concession no matter how long they might have been in possession. There shall equally be considered as owners those who, having no title shall prove that they have enjoyed uninterrupted possession of the above mentioned kind of lands, for twenty years if the lands be under cultivation, and for thirty years if the land be uncultivated. In order to consider the land as under cultivation, it must be
153 proved that it has been so cultivated for the last three previous years." "Art. 3. All the land-grants in general, and specially those given since the year 1850 until date, when the conditions imposed have not been complied with, are declared as non-existing, and the land declared as having reverted to the State." It appearing that by Royal Decree of August 20, 1888, published in the Island Gazette under date of October 11, of the same year, it is decided: "That Art. 3 of the Regulations *is* amended in the following man-

ner: 'The land-grants in general and especially those given since the year 1850 to 1884, when the conditions imposed have not been complied with are declared non-existent, and the lands reverted to the State, unless the grantees have been in possession for over 30 years—the length of time provided for prescription of uncultivated lands owned without title in the preceeding Article.'" It appearing that even supposing that the lands were in possession without title and without cultivation, by virtue of the Royal Order and of the above Regulations, it must be held that plaintiff is the owner of what he now claims, because the concession still stands good and those lands cannot be considered today as having reverted to the State. It appearing that the legal requisites inherent to the right of an action for revindication of property have been complied with, that is to say, the right of full ownership (dominio) and the identification of the property claimed which, has been clearly shown is the tract of land described and inscribed in the Registry of Property, which act (the inscription) should also be declared null if the dominion rights in favor of plaintiff are to be respected and if the principle specified in Article 4 of the Reformed Civil Code,—as to violation of the law—is to prevail said description must
154 be declared void, same having been ordered without the right to do so and without complying with the requisites prescribed by law, mistakes admitted later by the Honorable Treasurer of this Island himself, as shown by his official communication, dated June 4, 1901, in which said communication, addressed to plaintiff's representatives, he states that if he (the Treasurer) had had in his hands the documents (those incorporated in these proceedings) he would not have acted the way he did, and this clear and honest statement confirms further plaintiff's rights. In view of the provisions of Rule 63 of General Order 118, series of 1899; In view of the legal prescriptions quoted and those pertinent quoted in the judgment appealed from, together with the Law approved by the Legislative Assembly on March 12, 1903, and Articles 358, 361 and 371 of the law of Civil Procedure, it is hereby decreed that we should confirm and we do confirm the judgment entered by the District Court of San Juan on August 1, 1902, without making any special provision for the payment of costs of this appeal. Let this decision be communicated and let the record of the cause be returned to Court of original jurisdiction. José S. Quiñonez; dissenting, José C. Hernandez; José Ma. Figueras; dissenting J. H. McLeary. The Associate Justice, Mr. Louis Sulzbacher voted from the bench but was unable to sign on account of absence in the United States. José S. Quiñonez.

Lawyer Mr. Antonio Castro, Secretary of the Supreme Court of Justice of Porto Rico:

I certify that the above decision is a true copy of the original thereof in this office; and to deliver to Lawyer Mr. Eduardo Acuña representing Mr. Pierre Emmanuel Baron de Laurens d'Oiselay, and complying with the orders of the Hon. President dated this day,

I issue the present copy to which I attach Internal Revenue
155 Stamps to the value of $13 and 45c at San Juan, Porto Rico, this 15th day of September, 1904.

(Signed) A. F. CASTRO,
Secretary of the Supreme Court.

Seven cancelled stamps.

The land referred to in the preceding document is inscribed in favor of Monsieur Pierre Emanual Henri Marie Baron du Laurens d'Oiselay, by virtue of said final judgment, the will and the certificate of death of the Duchess of Mahon Crillon and other documents, at folio 52 over of Volume 28 of the Municipality of Lares, property No. 1677, 3rd inscription.

Aguadilla, October 12, 1904.

THE REGISTRAR. Lic. JOSÉ MIGUEL MARQUEZ.

Fees $25.50.

Tariff, 1 and 5.

Stamps cancelled on margin for $25.50.

[Seal of Registrar of Property of Aguadilla, P. R.]

Translated by:

C. A. DAVIDSON.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

156 COPY OF EXHIBIT "B" FOR THE PLAINTIFF.

THE PEOPLE OF PORTO RICO.

Office of the Secretary of Porto Rico.

I, D. A. Skeener, Acting Secretary of Porto Rico, do hereby certify:

First. That in the assessment of territorial taxes made by the municipality of Lares, for the year 1888-89 of which assessment there exist a certified copy annexed to the corresponding expediente, this being in the legajo No. 657 of the Archive of Public Hacienda in the custody of this Department, it appears that to the Duchess de Mahon Crillon was charged for State taxes during said year the sum of one hundred and twenty pesos, eighty-seven cents; and nine pesos, ninety-one cents for collection fees, it making a total amount of one hundred and thirty-three pesos with seventy-eight cents.

Second. That in the assessment rolls of the agricultural riches formed for the apportionment of taxes for the aforesaid year in Lares, (padrones de riqueza de Lares) of which there exist certified copy annexed to the corresponding expediente, Legajo Number 657

of the Archive of Hacienda Publica, it appears the Duchess de Mahon Crillon with the lands and gross product obtained from the said lands as follows:

In the assessment rolls of pasturage culture, seven hundred cuerdas of land with a gross product of three hundred and eighty-eight pesos, eighty-nine cents.

In the assessment rolls for the cultivation of small fruits (frutos menores) forty cuerdas of land with *agros* product of three hundred and seventy-nine dollars, and 23*c*.

In the assessment roll for coffee culture, thirty-eight cuerdas
157 of land, with a gross product of one thousand five hundred and twenty-eight pesos, and 6*c*.

In the assessment roll of woods and "malezas," one thousand eight hundred and twenty-two cuerdas of land, with a gross product of nine hundred and ninety three pesos and 53*c*. All making a total of:

Two thousand six hundred cuerdas of land, with a gross product of three thousand two hundred and seventy-nine pesos with seventy-one cents.

In testimony whereof, I issue and sign this certificate, at the petition of Don Federico Degetau, and have affixed the Great Seal of Porto Rico this seven day of June of nineteen hundred and nine.

(Signed) D. A. SKEENER.
Acting Secretary of Porto Rico.

158 COPY OF EXHIBIT "C" FOR PLEE.

Office of the Treasurer of Porto Rico.

[Seal Treasurer for the Island of Porto Rico.]

I, the undersigned Treasurer of Porto Rico, certify that according to data in my office, there was sent on the 4th of September, One thousand nine hundred, from the office of the Treasurer to the Municipal Alcalde of Lares, a communication of which the following is an exact copy:

"That in view of the resolution adopted by that Ayuntamiento "in an extraordinary session on the 27th of August, ultimo, a copy "of which you sent to this office with the letter of remittal, dated "the first of the current month, because of a written application of "Don Virgilio Acevedo y Hernandez asking that there be struck "from the public tax lists for the territorial assessment of 1900-1901, "the Duchess of Mahon Crollón, and that in her stead be placed the "aforesaid Acevedo, as grantee of the lands which appear in the "name of said Duchess in that Municipality, the rights and interest "in which lands he acquired from the rightful owners who have "been in peaceful possession.

"In view of the protest made by Don Virgilio Acevedo against "the aforesaid proceedings on account of the municipality not "having passed this resolution, and on the contrary referred this "matter to the Treasury Department for the necessary action;

" In view of these facts, it now appears:

"1. That from 1776, there were granted to the Duke of Mahon
" Crillón, 27 caballerías of land, which make 5400 cuerdas, in Río
" Grande and Lares of which he has not had the usufruct, neither
" has he cultivated, according to a circular of the Governor Captain
" General, inserted in the Gazette No. 67 of June 6, 1854.

"2. That it was ordered by Royal Order of the 15th of September,
" 1852, that the said lands in Río Grande and Lares, and which had
" not been utilized or cultivated, should revert to the crown, and
" ordered at the same time that the necessary proceeding should be
" instituted.

"3. That the Superior Board of Waste Lands, declared the said
" lands reverted to the state, and that the public should be so
" informed, so that those persons who were able to meet the condi-
" tions laid down by law should make application for them if they
" so thought fit.

" 4. That the Ayuntamiento of Lares in a resolution of the 18th
" day of August, 1854, recognized the grant made to the Duke
159 " with no property rights to those who had been having the
" usufruct of the lands in question.

" 5. That on the 27th of December of the same year, the Board
" of Lands granted these lands reverted to the state, to those in pos-
" session, with the condition that no one should receive more than
" 100 cuerdas, and with the added condition that they take out the
" necessary commission within the period of two months to have the
" land surveyed, paying at the same time the legal fees; but it does
" not appear that these expressed conditions were complied with.

" 6. That the landholders, all or some of them, by a public instru-
" ment executed in Lares before the acting notary Don Salvador
" Picornell y Cardona, on the 5th day of July of the present year,
" transferred to Don Virgilio Acevedo y Hernandez, all the rights
" and interests which they hold in the aforesaid lands in the barrios
" of Callejones and Piletas, in that municipality, making a total
" area of 4133 cuerdas, equivalent to 1624 hectares, 44 ares, 13
" centiares, bounded by unowned and waste lands, and with those
" of José Gregoria Velez, José Miguel Colón, Juan José Lopez, and
" the river Camuy.

" And considering:

" 1. That the lands which were granted in 1776 to the Duke of
" Mahon Crillón belong to the state, now the Insular Treasury of
" Porto Rico, from the time that they were reverted to the state by
" the Board, and that no one except the Insular Treasury has any
" right in them;

" 2. That although they were granted to the seventy-four land-
" holders by the same Board, the records were never perfected because
" the landholders did not fulfil the prerequisites conditions;

" 3. That the Duchess of Mahon Crillón cannot nor should not
" have figured in the tax or assessment lists, and those who had her
" entered in said lists without the necessary authorization will be
" held responsible for the consequences;

" 4. Also that the landholders cannot grant or transfer that which

" is not theirs, therefore the deed in favor of Don Virgilio Acevedo
" is null and void.

" Therefore I hereby order:

" 1. That the name of the Duchess of Mahon Crillón be stricken
" immediately from the lists, and that in her place be entered the
" names one by one of the landholders with the number of cuerdas
" of land which they hold, its class, and any other details in the
" Hand-book.

" 2. That there be sent to the Registrar of Property a certified copy
" of this decision so that the record of the transfer hereinbefore
" mentioned in favor of Don Virgilio Acevedo shall remain without
" effect.

" 3. That all the landholders deliver to the Alcaldía all the titles
" which they hold and which prove their rights to the usufruct of
" said lands, and that they be given receipts for the same, and that
" you send the said documents, with a list in duplicate of them
160 " to this office of the Treasurer, so that they may be made a
" part of the record, and for any other necessary purpose; or
" certifying to any documents which do not exist.

" This is sent for the information of yourself, the Municipality,
" Don Virgilio Acevedo, and the landholders, that they be informed
" through the customary channels, sending at the same time a return
" of said notification to this office."

This document is given in San Juan, Porto Rico, on the 10th day of January, one thousand nine hundred and one, at the request of Attorney Don Rafael Palacios Rodriguez, and for any proper purpose.

(Signed) J. H. HOLLANDER,
Treasurer.

$2 in Revenue Stamps.

[Seal Treasurer for the Island of Porto Rico.]

Rubber stamp: The People of Porto Rico, Office of the Treasurer.

161 COPY OF EXHIBIT "D" FOR THE PLAINTIFF.

Office of the Treasurer of Porto Rico.

SAN JUAN, *January* 4, 1901.

SIR: The several documents contained in the dossier submitted by you in connection with your claim to certain lands in the Municipality of Lares, now recorded in the name of The People of Porto Rico, have been carefully examined, and I have the honor to communicate the following information in relation thereto.

In August, 1900, the attention of this office was directed to the fact that one Virgilio Acevedo had petitioned for the removal of the name of the Duchess de Mahon from the tax rolls of Lares and the substitution of his name therefor. This petition was made by virtue of Acevedo's acquisition of the titles alleged to vest in the

colonists or tenants occupying the lands theretofore reputed to belong to the estate of the Duke de Mahon.

Upon careful investigation it was discovered that, the colonists, and, in consequence, Acevedo, had no adequate right or title to the lands in question and, moreover, that no title of any kind to said lands was recorded in the proper registry of deeds. Acting upon documentary evidence that in the year 1854 the said lands had been forfeited to the State for non-compliance with the terms and considerations of the original grant, and for the purpose of protecting the public interests, the said lands were, in accordance with the request of the Treasurer of Porto Rico, dated September 4, 1900, entered and recorded in the name of the People of Porto Rico.

Among the documents submitted by you in support of your claims to the ownership of the said lands, I find copies of certain Royal Orders and orders of the Governor-General of Porto Rico, which, if authentic, would indicate that the said forfeiture to the State was suspended and the representatives of the Duchess de Mahon put in possession again.

162 Whether these documents are authentic, and whether the conditions and requirements of the orders by which the forfeiture was suspended have been fully complied with, are questions which in my opinion should be and must be decided by a proper judicial tribunal.

I have no hesitation in stating, however, that had these orders and rulings been recorded in the proper registry of deeds, the action taken by this office in causing the said lands to be recorded in the name of The People of Porto Rico, would not have transpired and that in my opinion the said documents constitute most important evidence in relation to the question at issue.

I may add that, it is the desire of this office that the question at issue should be decided by a proper judicial authority strictly upon the equities involved, and that the title should be quieted without unnecessary formality, cost or delay.

Respectfully, J. H. HOLLANDER.
Treasurer.

Mr. Pierre Emmanuel Henri Marie, Baron du Laurens d'Oiselay, San Juan, Porto Rico.

163 EXHIBIT "E" FOR PLAINTIFF.

Jose Clodomiro Levy y Gonzales, Secretary of the Municipality and Council of Lares

Certifies: That in the letter copy-book of the office of the Mayor No. 2 and pertaining to the year nineteen hundred there appear two communications one on folio 8 and the other on folio 98 which literally copied read as follows:

"October 29, 1900. To the Honorable Treasurer of Porto Rico, San Juan. Sir: I have the honor to acknowledge the receipt of your esteemed communications dated 25 and 26 instant. Referring to the former I beg to state that for several days the proceedings in

compliance with your order contained in the third paragraph of your communication of September 4 have been prosecuted, and as soon as the same shall have been concluded will forward you the titles of the possessors of the lands known as the Duchess de Mahon Crillon. There are approximately 250 of these and to serve citations and notices upon all who appear in default in the matter is somewhat difficult. With respect to your last communication dated the 26, your orders will be complied with and within a few days you will receive the additional distribution which includes the possessors of the said lands." Respectfully." (Signed) "Pablo Vilella, Municipal Alcalde." "Lares, December 3, 1900. To the Honorable Treasurer of Porto Rico. Sir: In conformity with the order contained in your communication of October 26 last past, I hereby forward you the distribution of the lands called 'Duke de Mahón Crillón.' Respectfully." The Acting Alcalde. "Antonio Collazo."

The foregoing is a true and faithful copy of the original one filed in the letter copy-book hereinbefore mentioned and for the purpose of delivering the same to Don Miguel Coll Rullán I issue these presents in Lares, on March 26, 1909.

(Signed) J. C. LEVY,
Secretary of the Municipal Council.

(The impression of a rubber stamp is affixed to the original.)

164 EXHIBIT "F" FOR PLAINTIFF.

Statement taken from the book of the lands leased which belong to her Grace Miss Maria Bathe de Crillón, the Duchess of Mahon, showing the names of the colonos, barrios, in which situated, number of cuerdas in possession of each, and the amount paid annually by each.

	Names.	Barrio	Cuerdas.	Pesos Cent.
1	Manuel Soto	Callejones	41½	41.50
2	Pedro Echandia	"	7	7. "
3	José Felix Perez	Piletas	32	32. "
4	Juan Eugenio Foledo	Callejones	30	30. "
5	Ygnacio Cruz	"	80	80. "
6	Ramon Valentin Olavania	Piletas	47½	47.50
7	Miguel Bayon	Callejones	62½	62.50
8	Rafael de Arce	Piletas	15	15. "
9	Juan Vicente Soto	Piletas	19	19. "
10	Eugenio Alicea	Piletas	14	14. "
11	Pedro Merson	Callejones	145½	145.50
12	Juan Adami	Callejones	20½	20.50
13	Juan Yraiso	Callejones	166½	166.50
14	Juan Bta Felez	Callejones	54	54. "
15	Jose Maria Rodriguez	Piletas	45½	45.50
16	Manuel Santo Gonzalez	Piletas	12	12. "

17	Laureano Medina	Piletas	22½	22.50
18	Juan Pitre Lebron	Piletas	13	13. "
19	Juan de Diaz Burgo	Piletas	8	8. "
20	Dionisio Rodriguez	Piletas	12	12. "
21	Cirilo Perez	Piletas	36	32.88
22	Jose Dolores Cruz	Callejones	206½	206.50
	Forward		1120½	1117.38

165

	Brought forward		1120½	1117.38
23	Antonio Arroyo	Piletas	12	12. "
24	Maria Santos Santiago	Callejones	12	12. "
25	Pedro Fowes Luiles	Callejones	50	50. "
26	Manuel Rodriguez 2d	Callejones	40	40. "
27	Sandalio Rivera	Callejones	35	35. "
28	Juan Andrés Cardona	Callejones	25	25. "
29	Celestino Cardona	Callejones	10	10. "
30	Antonio Garcia	Callejones	22½	22.50
31	Juan Eleuterio López	Piletas	15	15. "
32	Filipe Lopez	Callejones	14	14. "
33	Eugenio Ramon	Callejones	17½	17.50
34	Angel Hernandez	Piletas	17	17. "
35	Juan Fidel Velez	Callejones	19	19. "
36	Juan Miranda	Callejones	63½	63.50
37	Pedro Pérez	Piletas	17	17. "
38	Manuel Jesús Santiago	Piletas	8	8. "
39	Francisco Castro	Piletas	5	5. "
40	Tomás Múnoz	Callejones	60	60. "
41	Manuel Ramos	Piletas	14	14. "
42	Ramon Cardona	Callejones	12	12. "
43	Juan Eugenio Gonzales	Callejones	21	21. "
44	Juan Santiago	Callejones	10	10. "
45	Juan Gregonio Ramos	Callejones	36	36. "
46	Juan Rio Yrizarry	Piletas	9	9. "
47	Roman Abad Foledo	Callejones	27	27. "
	Forward		1692	1688.88

166

	Brought forward		1692	1688.88
48	Lenon Perez	Callejones	32	32. "
49	Manuel Ortiz	Callejones	6½	6.50
50	Avelino Rosado	Callejones	4½	4.50
51	Clemente Millan	Piletas	44	39. "
52	Antonio Valle	Piletas	10	10. "
53	Manuel Avila	Callejones	6	6. "
54	Juan Francisio Santiago	Piletas	6	6. "
55	Bartolonie Lopez	Piletas	22	22. "
56	Manuel Velez	Piletas	26	26. "
57	José Antonio Gonzalez	Callejones	12	12. "
58	Pedro Vargas	Callejones	32	32. "

59	Juan de la Luz Caban	Callejones	17½	17.50
60	José Miguel Colon	Callejones	52	52. "
61	Pedro Miranda	Callejones	30	30. "
62	Victoriano Alicea	Piletas	13	13. "
63	Juan de Dios Lopez	Piletas	12½	12.50
64	Ramon Mendez	Piletas	6	6. "
65	José Lopez Medina	Piletas	23½	23.50
66	José Hilario Roman	Callejones	25	25. "
67	Juan Guzman	Callejones	49½	49.50
68	Jose Alicea	Piletas	16	16. "
69	Francisco Ris	Piletas	9	9. "
70	Maximo Nieves	Callejones	20	20. "
71	José Ramón Velez	Callejones	8½	8.50
72	Maria Lopez	Callejones	14	14. "
	Forward		2189½	2181.38
167				
	Brought forward		2189½	2181.38
73	Santos Ramos	Piletas	22½	22.50
74	Juana López	Piletas	10	10. "
75	Gavino Garcia	Piletas	27½	27.50
76	Benigno Garcia	Callejones	22	22. "
77	Manuel Lopez y Lopez	Piletas	17¼	17.25
78	Francisco Lopez Santiago	Piletas	4	4. "
79	Jose Perez Borrero	Piletas	6	6. "
80	Agapito Estremera	Piletas	11	11. "
81	Juan Gumersindo Badillo	Piletas	6	6. "
82	Celestino Zuiles	Piletas	7	7. "
83	Manuel Lopez	Piletas	6	6. "
84	Alonso Velez	Callejones	21½	21.50
85	Ysabel Adami	Callejones	8	8. "
86	José Dolores Cajiga	Piletas	23	23. "
87	Bautista López	Piletas	17	17. "
88	Luis Gonzalez	Piletas	26	26. "
89	Antonio Yrizarry	Piletas	10	10. "
90	Ramon Mercado	Piletas	5	5. "
91	Juan Mosario	Piletas	17	17. "
92	Pedro Rodriguez Perez	Piletas	7.50	7.50
93	Lúcas Adami	Callejones	11	11. "
94	Domingo Santiago	Piletas	6½	6.50
95	Cornelio Acevedo	Piletas	6½	6.50
96	Juan Rivera Soto	Piletas	10	10. "
97	Carlos Mendez	Piletas	25	25. "
	Forward		2522¾	2514.63
168				
	Brought forward		2522¾	2514.63
98	Ysabel Gonzalez	Callejones	14	14. "
99	Raimundo Lopez	Callejones	20	20. "
100	Pablo Vilella	Piletas	22	22. "

101	Juan Anto López	Piletas	7½	7	50
102	Jose Antonio Segama	Piletas	18	18	"
103	Carlos Santiago	Piletas	8	8	"
104	Evangelista Ramos	Piletas	9½	9	50
105	Domingo López	Piletas	9	9	"
106	Bartolomé Foledo	Callejones	12½	12	50
107	Marcelino Latorre	Piletas	27½	27	50
108	Maria Santos Soto	Callejones	12	12	"
109	Juan Pedro Hernandez	Piletas	14	14	"
110	Filipe Martin Ruiz	Callejones	35	35	"
111	Baldomeri Ruiz	Callejones	12½	12	50
112	Juan Borrero	Callejones	40	40	"
113	Maria Anastasia Velez	Callejones	5	5	"
114	Juan Perez	Piletas	8	8	"
115	Manuel Jesus Lopez	Piletas	12	12	"
116	José Torres	Piletas	6	6	"
117	Maria Eulogia Hernandez	Callejones	10	10	"
118	Manuel Higinio Gonzalez	Callejones	32	32	"
119	Juan Yrene Cardona	Callejones	7	7	"
120	Wenceslao Alers	Callejones	26	26	"
121	Manuel Yrizarry	Piletas	9	9	"
122	Juan Pablo Badillo	Piletas	9	9	"
	Forward		2908¼	2900	13
169					
	Brought forward		2908¼	2900	13
123	Wenceslao Cardona	Piletas	37	37	"
124	Bruno Gonzalez	Piletas	12	12	"
125	Ramón Arce	Piletas	10	10	"
126	José Cruz Cortés	Callejones	39	39	"
127	Juan Rivera	Piletas	9½	9	50
128	Bernardo Latorre	Callejones	16	16	"
129	Juan Vivó	Callejones	18	18	"
130	Ramón Roman	Callejones	10	10	"
131	Francisco Javier Soto	Callejones	73	73	"
132	Juan Mayol	Callejones	59½	59	50
133	Bernardo Suau	Callejones	31	31	"
134	Bartolomé Marquis	Callejones	26	26	"
135	Juan Arbona	Callejones	144½	144	50
			3393¾	3385	63

Lares, 8 June, 1899.

(Signed) Attorney in Fact, MIGUEL COLL.

There are the impressions of a rubber stamp made five times but it is unintelligible.

170 *Statement of the account of the Duchess showing the amounts collected and paid since the last remittance made on April first to balance account according to an extract of an account forwarded her on that date.*

			Dr.	Cr.
1899.				
Jan.	2	By Cash from Bartolomo Marqués	.....	26 "
		Id. from Juan Arbona	.....	144 50
	10	Id. from Bernardo Suau	.....	31 "
	12	Id. from Juan Mayol	.....	59 50
	14	Id. from José Cruz Cortés	.....	10 "
		Id. from Ramón Román	.....	10 "
	18	Id. from José Fuentos	.....	16 "
	25	To Cash for six months' taxes on hand.	96 17	.....
	31	By Cash from Maria Santos Santiago	.....	7 "
Feb.	1	By Cash from Luis Antonio Pérez	.....	18 "
Mar.	19	To Cash to Attorney Rafael Lopez Landrón in payment of consultation and drawing writings to the Government on account of the refusal of the colonos to pay rent	100 "	.....
		Balance	125 83	
		Explanation	322 "	322 "

The credit of José Fuentos corresponds to the entry appearing Bernardo Latorre and the credit of Luis Antonio Pérez corresponds to the entry appearing Juan Frias.
Lares, 8 June, 1899.

(Signed) Attorney in Fact, MIGUEL COLL.

171 EXHIBIT "G" FOR PLAINTIFF.

Manuel Paz Urdás, Notary.

No. 35.

Deed of Substitution of Power of Attorney Executed by Alberto Baroncelli Javon to Nicolas Ytturregui Aracena, February 21, 1905, Arecibo, Porto Rico.

172 Number Thirty-five.

In the City of Arecibo on the twenty-first of February, nineteen hundred and five, before me, Manuel Paz Urdás, Notary Public in Porto Rico, with residence in this city and with the right to practice in any part of the Island, appear- Don Albertode Baroncelli Javon, of

legal age, unmarried, industrial agent, resident of the City of San Juan.

I certify that he is personally known to me, his profession and residence, he assuring me, and in my opinion he has the necessary legal capacity to execute the present deed of power of attorney by substitution, and states:

That by deed executed in Dijon, Republic of France, on the 11th of March, 1903, before the Notary thereof, Maitre Nassin, whose signature has been duly authenticated, Pedro Manuel Enrique María Barón de Laurens d'Oiselay granted him power of attorney for various purposes, as appears from a document presented by him written in French, translated into Spanish by Ysidodo D. Delgado, interpreter of the District Court for the District of San Juan, which copied literally is as follows:

"Ysidodo D. Delgado, interpreter of the District Court for the Judicial District of San Juan, Porto Rico, hereby certifies that Alberto de Baroncelli Javon has given him power of attorney written in French, the literal translation of which is as follows: There is a colored stamp which states 'J. Massin, Notary, Dijon.'—Another stamp—black—which is the seal of the stamped official paper of the French Republic.—On the margin there is an inscription which reads as follows: 'March 11, 1903.—Power of Attorney by Mr. 173 de Laurens d'Oiselay to Mr. Baroncelli-Javon.'—Before the undersigned Mr. Maisson, Notary in Dijon, appeared Pedro Manuel Enrique María Barón de Laurens d'Oiselay, Captain-Major of the Twenty-Seventh Regiment of Dragoons, residing in Dijon, who by these presents constitutes as his attorney in fact Alberto de Baroncelli Javon, industrial agent and resident of San Juan, to whom he gives for and in his name the authority to control, govern and administer the properties which the party hereto possesses in Lares (Island of Porto Rico,) accruing from the estate of Miss María Gabriela Antonieta de Berton de Balbe de Crillon, Duchess de Mahon.—Authorizing him thereby to determine what lands belong to the party appearing herein in Lares and which are situated in the barrios of Calle-jones and Pileta; to make plans and settle the boundaries thereof with all the adjoining owners.—To receive rents due and owing or which may be due and owing.—To receive also all the rentals due on the said lands when they were the property of the Duchess de Mahon.—To lease or rent by deed or verbally the said lands for the term, rental, and under the conditions and circumstances which the attorney in fact may deem proper, either wholly or in part.—To accept and renew leases or rescind the same with or without indemnity, and make all concessions of every nature whatsoever.—To sell crops.—To make all necessary improvements and repairs.—To effect sales in the market.—To adjust or cause to be adjusted all accounts and to pay the amount of the same.—To pay taxes, file claims for the reduction or to obtain the remission thereof.—To intervene, discuss, clear up and determine accounts with all the creditors, debtors and trustees; settle balances and to pay or receive payment thereof.—To withdraw from banks or depositories moneys deposited therein in the name of his principal or in the

name of the owner of the lands in Lares accruing from the estate of the Duchess de Mahon.—In the event that difficulties
174 should arise or in the event of non-payment to institute the necessary actions and compulsory proceedings or suits from the commencement of conciliatory proceedings to the conclusion of the suit or execution of judgment, and designate for this purpose attorneys at law.—Expressly to revoke, if the attorney in fact should deem it proper so to do, the powers of attorney conferred by his principal.—To revoke especially the power of attorney given by the Baron de Laurens to Mr. Vilella, the former mayor of Lares.—To attend to all orders and distributions, insure credits, withdraw orders for investment and collect the amount of the same.—In all transactions where money is received or paid, receipts and vouchers shall be demanded; and he shall consent to all written instruments, deeds of substitution, withdrawals, dissolution of attachments and cancellations.—To forward or cause to be delivered titles and documents of every nature whatsoever, receiving and issuing receipts therefor.—For the purposes aforesaid to execute and sign contracts of every description, elect his domicil, to confer all of the powers herein granted in whole or in part upon other persons by substitution.—To revoke all powers of attorney which may be granted by virtue of these presents, and in general to do everything that may be necessary.—Made and executed in Dijon in the office of Maitre Massin, a Notary Public, on the eleventh day of March, nineteen hundred and three.—And the party appearing herein Barón de Laurens d'Oiselay, after reading the foregoing instrument, signed the same with the notary.—(Signed) Barón de Laurens d'Oiselay.—(Signed) J. Massin. There appears the impression of a stamp in black ink signifying that this instrument was recorded in the archives of Dijon on March twelfth, nineteen hundred and three. Upon the back of the last page there appears a stamp the purpose of which is
175 to authenticate the signature of the notary, and this authentication is subscribed by a substitute judge of first instance of Dijon.—There appears the impression of the seal of the Minister of Justice of France certifying to the authenticity of the judge of Dijon.—There appears the impression of the seal of the Minister of Foreign Relations in red ink certifying to the authenticity of the foregoing signature.—There appears the impression of another stamp in black ink, being the seal of the Consulate General of the United States in France certifying the authenticity of the signature of the Minister of Foreign Relations of France.—And I further certify that the foregoing translation is correct; and in order that it may duly appear I sign these presents at San Juan, Porto Rico, October twenty-fifth, nineteen hundred and four.—Ysidoro D. Delgado—Interpreter of the District Court for the Judicial District of San Juan."

Upon a comparison of the foregoing translation with the original thereof, the same appears literally to agree.

And the party appearing herein, availing himself of the power conferred upon him, appoints as his substitute and confers upon Don Nicolas Yturregui y Arocena, of legal age, married, a merchant and a resident of Lares, all of the powers conferred upon him by the

power of attorney executed in his favor by Don Pedro Manuel Enrique María, Baron de Laurens d'Oiselay, without any reservation whatsoever.

Execution.

Thus it is stated by Don José Antonio Pérez Rivera, first, and Don José Gutierrez Rivera, residents of this City, and executed and signed by him, together with the witnesses, without exception.

At this stage of the proceeding I read the whole of this deed to the party executing the same and the witnesses, and advised
176 them of the right which they had to read it for themselves, which right they waived; and they having thereby become acquainted with all of the facts the former gave his most solemn and effectual consent to all of the clauses therein contained.

And I the Notary hereby certify to everything contained in this public instrument and that the proper internal revenue stamps have been affixed thereto. Signed.—Alberto Baroncelli.—José A. Perez.—José Gutierrez.—And after his seal Manuel Paz Urdáz. An internal revenue stamp of the value of one dollar is affixed to the instrument and cancelled by the stamp of the Notary.

This is a first copy, which agrees with the original appearing in my protocol of current public instruments, in the numerical order cited. And at the request of the party executing the instrument, Don Alberto Baroncelli-Javon, I issue the same on two sheets of the paper used by me, in Arecibo, on February twenty-first, nineteen hundred and five. Amendments—portions—withdrawal—Perez—Interlineations—ro—Valid.

(Signed) MANUEL PAZ URDÁZ.
(A flourish.)

(The seal of the Notary, Manuel Paz Urdáz, is affixed thereto. An internal revenue stamp of the value of fifty cents cancelled by the impression of a rubber stamp of the Notary, Manuel Paz Urdáz.)

177 COPY OF EXHIBIT "H" FOR PLAINTIFF.

(Translation.)

I, Alberto Marin Marien, Secretary of the District Court for the Judicial District of San Juan, Porto Rico, do hereby certify:

That in the proceedings on file in this office under my charge in the case of Pierre Emmanuel Baron de Laurens d'Oiselay, as heir of the Duchess of Mahon Crillon, against the People of Porto Rico, for the recovery of lands, on January 30, 1901, there exists the following documents with reference to the possession of the four thousand one hundred and thirty three cuerdas of land situated in Lares in the barrios of "Piletas" and Callejones" which constituted the object of said suit.

Said documents literally copied read as follows:

(Folio 43:)

Office of the Treasury of Porto Rico, San Juan, September 14th, 1900. To the collector of Internal Revenue of Aguadilla: Sir: I enclose herewith certificate in duplicate for the inscription of possession in favor of the People of Porto Rico of a part of the lands which it possesses in the municipal district of Lares, in the barrios of Piletas and Callejones having an area of 4133 cuerdas, in order that you may present said document in duplicate at the Registry of Property of that town, demanding receipt of the presentation and taking back one of the documents with the annotation from the Registrar of Property, returning the same to this office for proper action. Very respectfully (blank) Treasurer.

On the back of this document there appears the following endorsement: September 14, 1900. To the Collector of Internal Revenue at Aguadilla: Forwarding certificate in duplicate for the
178 inscription of possession in favor of the People of Porto Rico of a part of the lands which it possesses in the municipal district of Lares, barrios Piletas and Callejones, having an area of 4133 cuerdas.

At folio 44:

Office of the Collector of Internal Revenue Department of Aguadilla—Number 570—September 17, 1900—The Honorable, the Treasurer of Porto Rico, San Juan, Sir: In compliance with your instructions contained in your letter of the 14th inst. I have the honor to forward you herewith receipt showing that I have presented at the Registry of Property of this town the certificate in duplicate for the inscription of possession in favor of the People of Porto Rico of a part of the lands which it possesses in the municipal district of Lares barrios Piletas and Callejones. Very respectfully. Signed—Jose R. Vidal—Collector (There is a stamp which reads "Received Treasurer's Office, September 19th, 1900, Mail clerk.)

At folio 46:

Office of the Treasurer of Porto Rico—San Juan, October 12, 1900—To the Collector of Internal Revenue of Aguadilla. Sir: On September 17th ultimo the Registrar of Property of that city issued receipt of the certificate for the inscription of possession of several lands which the People of Porto Rico possesses in Lares, badly called of the Duke of Mahon Crillon, and as the time fixed by the Mortgage law has long expired, you will please claim the duplicate of said document with the annotation of inscription. Respectfully Blank—Acting Treasurer.

At folio 47:

Office of the Collector of Internal Revenues—Department of Aguadilla—Num. 653—October 17th, 1900—The Honorable the Treasurer of Porto Rico, San Juan, Sir: I have the honor to enclose herewith certificate of inscription of possession of several lands

which the People of Porto Rico posses- in Lares, which docu-
179 ment was turned over to me yesterday afternoon by the Registrar of Property of this town—Very Respectfully—Jose R. Vidal, Collector. There is a stamp. Office Treasurer of Porto Rico, October 20, 1900. Received.

At folios 52 and 53:

Office of the Treasurer of Porto Rico—San Juan October 25th, 1900—to the Mayor of Lares: Sir: Under date of Sept. 4, ultimo I notified you of the action taken with reference to a resolution passed by that Municipality and also to the petition made by Don Virgilio Acevedo, ordering as follows:

1. That the duchess de Mahon Crillon be immediately stricken from the tax rolls putting in its place the names of the land holders one by one with the number of cuerdas which each of them possesses, its class and other circumstances provided in the Cartilla-guia.

2. That a certified copy of this decision be forwarded to the Registrar of Property so as to prevent the inscription in favor of Don Virgilio Acevedo of the conveyance made in the public deed hereinbefore mentioned, and

3. That all the land holders deliver to that Municipality under receipt, their respective titles of concession, giving them the right to use the lands, which documents you will please forward to this office with a list thereof in duplicate to be placed on file and for further action; or negative certificate.

And as time has elapsed without having received any answer nor notification of any steps having been taken in that behalf, I reiterate what I said in my communication of the 4th of September, notifying you that the aforesaid lands amounting to 4133 cuerdas have been inscribed in the Registry of Property of Aguadilla in
favor of the People of Porto Rico, under date of the 25th
189 of the same month of September at folio 51 of volume 28 of the Municipality of Lares, Property No. 1677, first inscription, and we need now that that Municipality send us the returns requested, in order to continue the proceedings. Respectfully—Writen in pencil on the place reserved for the signature Signed—J. H. Treasurer" A. A. B.

At folio 54:

Office of the Treasurer of Porto Rico—San Juan, P. R. October 26th, 1900—To the Mayor of Lares: Sir: As an addition to my communication of yesterday the 25th, I have the honor to inform you that we have received the rural tax list for the fiscal year 1900-1901 wherein the Duchess de Mahon Crillon has been eliminated in accordance with the orders of this Department dated September 4th, ulto, but as there have not been added thereto the land holders, of lands of the People of Porto Rico, wrongly called of the Duke of Mahon Crillon, you will please make an additional tax list including said land holders, sending same as soon as possible.—Respectfully—Blank space for signature—Treasurer—A. A. B.

In witness whereof I issue the present at the request of Don Frederico Degetau, attorney for the Baron d'Oiselay.
San Juan, Puerto Rico June 19th, 1909.

A. MARIN MARIEN,
Secretary for the District Court of San Juan.
By MODESTO ESCUDERO,
Deputy Clerk.

O. K.
H. BROWN,
Ass't Attorney General.

The above is a correct translation.
(Signed) F. FANO,
Interpreter & Translator U. S. Court.

181 COPY OF EXHIBIT "I" FOR THE PLAINTIFF.

I, Jaime Vilaseca, Acting Marshal/ of the District Court of San Juan, Porto Rico,
Certify: that there appears in the civil dockets in my charge, in the volume belonging to the year 1906, at folio Number 190, the following entry: "Pierre Emanuelli, Baron de Laurens d'Oiselay, plaintiff, vs. The People of Porto Rico, Recovery of Lands and other purposes (I mean) Orders for execution of judgment," there being no further record or entry as to any steps taken or that might have been taken for the carrying out of said judgment, as appears from the examination which I have made of the books under my charge.
I issue this present certificate at the request of Mr. Federico Degetau, Attorney-at-Law, at San Juan, Porto Rico, this 19th day of June, 1909.

[Seal of the District Court of San Juan.]
(Signed) JAIME VILASECA,
Acting Marshal of the District Court.

Agreed to:
J. H. BROWN,
Ass't Attorney General.

The above is a correct translation.
F. FANO,
Interpreter and Translator, U. S. Court.

182 COPY OF EXHIBIT "J" FOR THE PLAINTIFF.

I, Tomas Cespedes y Aviles, solemnly swear, that while I was sub marshal/ of the Municipality of Lares, P. R., at the beginning or during the year 1906, I received from the Marshal/ of the District Court of San Juan, the proceedings to reinstate and give the pos-

session of the property composed of four thousand one hundred and thirty-three cuerdas of land, located in the barrios of Piletas and Callejones in the municipality of Lares, to the Baron Pierre Emmanuel Laurence d'Oiselay, against the People of Porto Rico, in whose possession said lands were, Said delivery of possession was made in pursuance of an order for the execution of certain decisions rendered in proceedings instituted by the said Baron d'Oiselay against the People of Porto Rico, claiming from the latter the property of said lands. That the lands claimed for in the barrios of Callejones and Piletas, were in the possession of the People of Porto Rico until the undersigned, gave possession of the same as ordered by the District Court of Porto Rico. That the proceedings for the restitution and delivery of possession of the four thousand one hundred and thirty three cuerdas of land, took effect on a motion of the lawyer Don Rafael Lopez Landron as attorney for the Baron, and with the assistance of himself, and of Mr. Nicolas Iturregui y Aricena, as attorney in fact of the Baron, of Mr. Emilio de Mazarredo, of the Mayor of Lares, and two insular policemen, and several other persons. That the colonists, lessees, tenants and landholders, were notified that in the future they ought to recognize as the sole and legitimate owner and possessor of said lands *to* the said Baron to whom they ought to pay the rents. That the papers relative to this delivery of possession are not kept by the undersigned because they were returned by him to the Marshal of the
183 District Court of San Juan.

Mayaguez, Puerto Rico, June 21st, 1909.

(Signed) TOMAS CESPEDES AVILES.

Number 133.

Signed and sworn before me by Tomas Cespedes Aviles, of full age, a clerk by profession, and resident of this City *to* whom I know well, which I certify—Mayaguez, P. R., 21st of June 1909—

(Signed) ROBUSTIANO BIAGGI,
Notary.

(Stamp of Notary.)

The above is a correct translation.

F. FANO,
Interpreter and Translator, U. S. Court.

184 COPY OF EXHIBIT "K" FOR THE PLAINTIFF.

I, Nicholas Iturregui y Arocena, resident of San Juan, manager of the Porto Rico Ice Co., declare under oath: That while I was attorney in fact of the Baron Pierre Emmanuel du Laurence d'Oiselay, in the year 1906, I went to the jurisdiction of Lares, with the lawyer of the Baron Mr. Rafael Lopez Landron, to attend the execution of a judgment asked for by said lawyer before the District Court of San Juan to give the possession of four thousand one hundred and thirty-three cuerdas of lands located in the barrios of Piletas

and Callejones in the municipality of Lares, belonging to the Baron, and of which lands he had been dispossessed by the People of Porto Rico. That said execution of judgment took effect from the 14th to the 21st day of March 1906; that the proceedings for the delivery of possession were made by the sub-marshal/ of Lares Mr. Thomas Céspedes Avilés; that in said proceedings, accompanied me besides the Marshal/ and the attorney Mr. Lopez Landron, Messrs. Emilio de Mazarredo and Carmelo Gonzales, then Alcalde of Lares; two insular policemen and other persons, before all of whom the neighbors who inhabited those lands were notified that they were no longer the landholders or colonists of the People of Porto Rico, but of the Baron Laurence d'Oiselay, *to* whom they ought to recognize as the sole owner and possessor, and not *to* the People of Porto Rico.

San Juan, P. R., June 22nd. 1909.

(Signed) N. ITURREGUI.

Number 282.

Sworn and signed before me, by Don Nicolas Iturregiui y Arocena, *of* 59 years of age, married, employee, resident of this city, *to* whom I know, all of *what* I certify.

San Juan June 22nd. 1909.

(Signed) FRANCISCO SOCORRO.

[SEAL OF NOTARY.] *Notary.*

The above is a correct translation.

(Signed) F. FANO.

Interpreter & Translator U. S. Court.

185 COPY OF EXHIBIT A FOR DEF.

Private.

LARES, *July* 23, 1900

Hon. W. H. Elliot,

SIR: I received your favor of the 20th to which I reply.

I have the honor of giving cover to the documents suggested by you and which bear upon the matter now in your office in consequence of a claim set up by Pablo Canals, who represents himself as the authorized agent of Duke de Mahon Crillón, dead now nearly a century ago.

I seek no favor, but justice, and trusting in your proved uprightness I expect that I shall not be disturbed in the quiet possession of the lands held by me.

Very respectfully,

(Signed) VIRGILIO ACEVEDO HERNANDEZ.

To the Honorable the Commissioner of the Interior.

SIR: I, Virgilio Acevedo y Hernandez, of legal age, married, a merchant and assignee of the lands called "Duque," situated in

barrios Piletas and Callejones, within this municipality, and whose personality is duly established by a copy of the deed of assignment of the rights and actions in said lands, executed in this town by the assignors therein appearing, on the 5th day of the present month, before Acting Notary Salvador Picornell y Cardona, of this town, respectfully set forth:

That upon the strength of aforesaid deed I am now the owner of said lands, my right thereto being naturally based upon that of the assignors and the history thereof I shall briefly state.

It is true that His Excellency the Duke de Mahon Crillón had obtained a grant of land during the last century, but said lands were abandoned by him, he having failed to comply with the conditions of the grant, for which reason they were declared to be waste lands and escheated to the Crown of Spain, pursuant to the provisions then in force, as shown by a copy of circular No. 77, published in the "Official Gazette" of June 5, 1854 (Exhibit No. 1).

In corroboration of the provision of the above-mentioned circular, I also have the honor of waiting upon you with a certified copy of a resolution granting certain waste lands to my assignors, which document throws more light upon the subject.

It now happens that a certain gentleman of this town who claims to be the present authorized agent of the heirs of His Excellency the Duke de Mahon Crillon, has brought an action of unlawful detainer against several of my assignors, believing, no doubt, that his principals continue to have rights over aforesaid lands, whereas their right is void, the grant and title of possession having been cancelled from the moment that, by virtue of the above-mentioned Royal Order, said lands were declared waste lands, escheated to the Crown and officially conveyed to my assignors, who were already in possession thereof, for which reason I pray you suspend the aforesaid proceedings.

All the documents which I herewith have the honor of forwarding to you are subsequent to those upon which the representative of the heirs of the Duke de Mahon Crillon bases his right, none of these being sufficient to establish ownership, inasmuch as they were canceled, and even if we had no document whatever, our 45 years of possession confer upon us the right of ownership.

Since this matter has been submitted to your decision, I have the honor of forwarding to you the accompanying document in order that, with a full knowledge of all the particulars of the case, you may decide in accordance with justice.

Lares, July 23, 1900.

Respectfully,

(Signed) VIRGILIO ACEVEDO HERNANDEZ.

EXHIBIT No. 1.

Town of Lares.

Certified copy of an order of the Government of this Island, canceling the grant of waste lands in Lares, that had been made in favor of the Duke de Mahon Crillon, the same being dated June 3, 1854.

I, Manuel Cuebas y Grappe, Acting Secretary of the Municipal Council and Mayor's Office of the town of Lares, do hereby certify That in the archives of the office under my charge there is a file marked No. 22 which contains copies of the "Official Gazette" for the years 1853 and 1854; and upon examination of those of the latter year, in No. 67 thereof, dated June 6, there is found in the first column of said issue a circular which reads as follows:

"Government and Captainship-General of the Island of Porto Rico.—Circular No. 77.—The system of allotment of unappropriated lands to national and foreign settlers, under the express condition of cultivating the same and making them productive, has largely contributed to the development of this Island, by extending and perfecting its agriculture. However, experience has shown that this vivifying system contains elements which, on the other hand, neutralize its beneficient effects. Thus, in human affairs, are ever closely associated evil and good, the use and abuse of wholesome principles! Persons who were not in a position to comply with aforesaid indispensable requisite, applied for and obtained concessions of lands which after many a dozen of years, are still found overrun with thickets, as in their primitive state, or perhaps worse, because, under the protection of the grantees, the useful timber have
188 been removed, their place being now occupied by brambles and briers, thus offering less inducement to those who would be willing to cultivate them. Meantime, the public resources have lost all that these lands could and should have produced, and the Treasury the small tribute levied upon them. This being the case with a large portion of the valuable and extensive grants made in 1776 to His Excellency the Duke de Mahon Crillon, the Captain-General's office, some time ago, called the attention of H. M.'s Government thereto, and on September 15, 1852, a Royal Order was issued declaring that it became necessary to proceed without delay in the matter of the reversion to the Crown of the 27 *caballerias* situated in the districts of Rio-Grande and Lares which the grantee had failed to care for and cultivate, for which purpose the proper proceedings should be instituted and prosecuted forthwith. In compliance with the aforesaid Order the necessary data were called for and these being examined by the Board of Waste Lands, as also the articles of the concession and orders referred to, it was decided, at a session presided over by me, to declare the said lands escheated to the Crown, and at the same time that the action taken be made public, so that such persons as were in a position to comply with the conditions required by the different orders heretofore, or that hereafter might be, issued for the early and proper cultivation of said

lands, could apply for them if they so desired.—And I hereby communicate said decision to you for your information and guidance. God preserve you for many years. Porto Rico, June 3, 1854. Fernando de Norzagaray. To the *Corregidors* and *Alcaldes* of the towns of this Island. As Secretary to the Governor and Captain-General, I hereby certify: That the foregoing circular has been issued by order of His Excellency and directed to be published in the "Official Gazette." Porto Rico, June 3, 1854.—Francisco Garcia."

And for delivery to Messrs. Acevedo and Company, merchants of this town, at their request and by order of the *Alcalde*, this copy is issued, visced and sealed by said *Alcalde* in Lares, November 15, 1899.

(Signed) MANUEL CUEBAS.

Visced,

The *Alcalde*,

(Signed) ACEVEDO.

189 EXHIBIT No. 2.

Town of Lares, Year 1854.

Copy of a Resolution of the Municipal Board, Requesting That the Right of Ownership and Possession of Certain Lands be Awarded to 74 Residents. Said Action Was Taken at a Session Held August 18, 1854.

I, Manuel Cuebas Grappe, Acting Secretary of the Municipal Council and Mayor's office of the town of Lares, do hereby certify: That according to the record of proceedings of the Municipal Board, at a session held August 18, 1854, the gentlemen noted at margin being present, and presided over by Don Frutos Pérez, Chairman, among other matters the following was taken up:

"Don Luis Vilella, the *syndic* (town-attorney), stated verbally: That, as it appears, several residents request that an assignment be made to them of lands which were formerly known as belonging to His Excellency the Duke de Mahon Crillon and are now declared to be unappropriated lands, by decision of the Government; that in the possession of said lands 74 residents have been protected, to whom the Government has granted a number of *cuerdas* according to their respective circumstances and family under the express condition that they shall cultivate the same in usufruct, but without ownership, and pay the royal taxes, and that upon the appearance of the owners thereof they shall deliver them without any right to indemnity that it is a well-known fact that these residents are in poor circumstances for which reason they cannot defray the costs necessary to acquire ownership of those parcels of land wherein they have built their houses and planted their patches, and inasmuch as it might happen that after having taken possession of these waste lands, some of the tenants may be ordered to quit, he called the attention of the Board to the matter so that, with such a report as it might deem proper, it

should pray His Excellency the Captain-General to be pleased to provide a brief and economical means whereby said residents may take possession as owners, in consideration of their well-known poverty, the state of cultivation of the land and the taxes paid by them for the same. The Board, acting upon the suggestion of the syndic, decided to submit the matter to His Excellency, praying him that in consideration of these poor people he be pleased to issue an
190 order for their protection, and at the same time that the remaining unappropriated lands be determined and the peaceful possession thereof made accessible to any other resident whom His Excellency might wish to favor; and a certified copy of this resolution together with a list of the aforesaid residents was ordered to be forwarded to His Excellency that he might decide according to his pleasure."

The foregoing is a true and faithful copy of the original to which I refer, and for delivery to the petitioners Messrs. Acevedo and Company I issue the same by order and with the visé of the *Alcalde*, in Lares this 18th day of November, 1899.

(Signed) MANUEL CUEBAS.

Visé'd:

ACEVEDO, *Alcalde*.

EXHIBIT No. 3.

Town of Lares.

Copy of the Record of Proceedings Relative to the Grant of Unappropriated Lands in Favor of 74 Residents and Giving Them Possession Thereof by an Order of the Government Dated December 27, 1854.

I, Manuel Cuebas y Grappe, Acting Secretary of the Municipal Council and Mayor's office of the town of Lares, do hereby certify: That in the archives of this office there is on file a record of proceedings relating to the grant of unappropriated lands which reads as follows:

"64.—Office of the Secretary of the Board of Waste Lands.—At the session held on the 22 inst. a resolution of the Municipal Board of that town was called up, which had been taken on motion of a *syndic* and wherein it is stated that on the lands formerly belonging to the Duke de Mahon Cyillon, 74 residents had settled with the consent of the Government of the Island, the list whereof was forwarded, each of whom is in possession of his respective portion and punctually pays his land dues. That therefore they should be held, not only as having been favored by the Superior Board, but as entitled to be put in possession at less cost than that paid by others for the same purpose.

191 "In view of the foregoing considerations, a decision was taken in conformity therewith as regards the grant of the

land in question to those who possess them, provided the same does not exceed one hundred cuerdas; the proper order for the survey thereof to be obtained within two months and the established dues paid. Which decision I transcribe to you so that you may inform the parties concerned, and report results for such action as might be called for. God preserve you for many years. Porto Rico, December 27, 1854.—Eusebio Nuñez. To the Alcalde of Lares.—Lares, January 2, 1855. Received the official communication addressed by the Secretary of the Superior Board of Waste Lands, dated December 27, 1854, which is placed at the head hereof so that the decision of the aforesaid Board may be promptly complied with; and to that end orders are directed to be issued to the deputy alcaldes of barrios Sibao and Lares, requesting them to cite and notify the persons who by authorization from the government, are settled on lands which, formerly belonging to the Duke de Mahon Crillon, are now declared unappropriated, and personally acquaint them with the decision of the Superior Board of Waste Lands, contained in aforesaid official communication, such as know how to write to sign the notification and those who do not, to do so through another resident. Thus was it provided, ordered and signed in our presence by the Alcalde Don Frutos Pérez to which we certify—Frutos Pérez—Present: Rafael Villafañez—Three reals. On the same day the proper orders were issued to the deputy alcaldes of barrios Sibao and Lares, as provided for in the preceding order, to which we certify—Villafañez—One real and a half.—On the 5th inst. appeared the residents Juan Bautista Torres, Juan Antonio de Sotomayor, Atilino Cuebas, Fermin Pérez, Juan Bayón, Luis Quiles, Bernardo Román, Joaquin Arvelo, Eugenio Quiles and Jacinto Vélez, who were personally informed of the resolution of the Superior Board of Waste Lands, as contained in the official communication placed at the head of these proceedings, Juan Bayón being the only one to sign, the others stating that they did not know how, the residents Manuel Juarbe and Antonio Escofet signing for them, before us the witnesses—Manuel Juarbe, Juan Bayón, Villafañez. Three reals.—On the same day appeared Claudio Soto, Antonio Ramos, Manuel Alvarez, Antonio de Santiago and Manuel de Jesús Mercado who were personally notified of the decision of the Superior Board of Waste Lands, contained in the official communication placed at the head of these proceedings; not knowing how to write, at their request, Manuel Juarbe and Antonio Escofet signed for them in our presence, to which we certify.—Manuel Juarbe, Antonio Escofet, Villafañez—one real and a half. On the same day appeared Pedro Méndez and Juan Esteban Méndez, who were personally notified of the decision of the Superior Board of Waste Lands, contained in the official communication placed at the head of these proceedings; not knowing how to write the witnesses, Antonio Escofet and Andrés Pol signed for them in our presence, to which we certify.—Antonio Escofet, Villafañez. One real and a half.—On the same day appeared Juan Francisco de Santiago and Pedro de Santiago who were personally notified of the

decision of the Superior Board of Waste Lands, contained in
192 the official communication placed at the head of these proceedings; not knowing how to write, Antonio Escofet and Andrés Pol signed for them at their request in our presence to which we certify—Antonio Escofet, Villafañez. One real and a half—On the 8th inst. appeared Juan Vazquez Castrillón who was personally notified by us of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head of these proceedings; not knowing how to write, at his request Andrés Pol signed for him together with us, to which we certify—Villafañez—One real and a half—On the same day appeared Domingo Lopez who was personally notified of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head of these proceedings; not knowing how to write, Andrés Pol, at his request, signed for him in our presence, to which we certify—Villafañez—One real and a half—On the same day appeared Carlos Madera, Cesáreo del Rio, representing his deceased father Esteban, and Manuel Morales, Miguel Acevedo, Juan Andrés Lopez, José Patricio Lopez, Francisco Nieves and Agustin Lopez, who were personally notified of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head hereof; not knowing how to write, they did not sign this being done at their request, by Antonio Escofét and Andrés Pol, together with us, to which we certify—Villafañez—One real and a half.—On the same day appeared Manuel de Jésús Serrano, Agustin de Sotomayor, Francisco Vidal and Antonio de Arza who were informed of the decision of the Superior Board of Waste Lands, contained in the official communication placed at the head hereof; not knowing how to sign, this was done for them, at their request, by Antonio Escofet and Andrés Pol together with us, to which we certify—Villafañez—One real and a half—On the same day appeared Manuel Martinez, Francisco López and José María López, who were personally notified of the decision of the Superior Board of Waste Lands, contained in the official communication placed at the head hereof; not knowing how to sign, this was done for them, at their request, by Antonio Escofet and Andrés Pol, together with us, to which we certify—Villafañez—One real and a half—On the same day appeared Manuel de Jesús Medina, Inés Hernandez, Manuel Nieves and Manuel López, who were notified of the resolution of the Superior Board of Waste Lands, inserted in the official communication placed at the head hereof; not knowing how to sign, this was done for them, at their request, by Antonio Escofet and Andrés Pol, together with us, to which we certify—Villafañez—One real and a half—On the same day appeared Francisco Lopez de Segura, José de Carlos and Juan Pérez, who were personally notified of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head hereof; not knowing how to sign, this was done for them, at their request, by Antonio Escofet and Andrés Pol, together with us, to which we certify—Villafañez—One real and a half—On the 9th inst. appeared José de Arce and Vicente de Arce, who were personally informed of the decision of the Superior Board

of Waste Lands, as contained in the official communication
193 placed at the head hereof; not knowing how to sign, this was done for them, at their request, by Antonio Escofet and Andrés Pol, in our presence, to which we certify—Villafañez—One real and a half—On the same day appeared Antonio Román who was personally notified of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head hereof; not knowing how to sign, this was done for him, at his request, by Miguel Sella, in our presence, to which we certify—Miguel Sella—Villafañez—One real and a half—On the same day appeared Manuel Cirilo Gonzalez, who was personally informed of the resolution of the Superior Board of Waste Lands, contained in the official communication placed at the head hereof; he signed the same together with us, to which we certify—Manuel C. González—Villafañez—One real and a half—On the same day appeared Felipe Echevarria and Nicolás de Rivera, who were personally informed of the resolution of the Superior Board of Waste Lands, as contained in the official communication placed at the head hereof; not knowing how to sign, this was done for him, at his request, by Manuel Cirilo González in our presence, to which we certify—Manuel Cirilo González—Villafañez—One real and a half—On the same day appeared Juan Clas, Francisco Rosado, Gregorio Román, Gerónimo Pérez, Juan Dimas Martinez, Manuel de los Santos González and José Antonio Nieves, who were personally informed of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head hereof; not knowing how to sign, this was done for them, at their request, by Antonio Escofet and Andrés Pol, in our presence, to which we certify—Villafañez—one real and a half—On the 10th inst. appeared Pedro Medina, who was personally informed of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head hereof; he signed the same, together with us, to which we certify—Pedro Medina—Villafañez—One real and a half—On the 17th inst appeared José Quiñones, who was personally informed of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head hereof; not knowing how to sign, this was done for him, at his request, by Antonio Escofet, in our presence, to which we certify—Villafañez—One real and a half.—On the same day appeared Juan López, who was personally informed of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head hereof; not knowing how to sign, this was done for him, at his request, by Juan Gregorio Acevedo, in our presence, to which we certify—Villafañez—one real and a half.—On the same day appeared Juan de Rivera, who was personally informed of the decision of the Superior Board of Waste Lands, as contained in the official communication placed at the head hereof; not knowing how to sign, this was done for him, at his request, by Antonio Escofet, together with us, to which we certify—Antonio Escofet—Villafañez."

The foregoing is a true and faithful copy of the original to which

I refer, and for delivery to Messrs. Acevedo and Company the
194 present is issued at their request, by order and with the visé of the Alcalde, in Lares this 14th day of November, 1899.

(Signed) MANUEL CUEBAS.

Viséed,
ACEVEDO, *Alcalde.*

EXHIBIT No. 4.

Town of Lares.

Certificate of Possession.

I, Manuel Cuevas Grappe, Acting Secretary of the Municipal Council and Alcalde's office, of this town, do hereby certify: That according to investigation made by this Alcaldía (Office of the Alcalde), it appears that the agriculturalists who are cultivating the lands known as "Duque," situated in barrios Piletas and Callejones, within this municipality, have been in peaceful possession of the same, succeeding one another, from a time prior to the year 1855, when the Government granted them said lands, according to the records on file with this Archive, and that both the agricultural and urban estates contained therein are their exclusive property, which they buy and sell with absolute liberty.

And at the request of Messrs. Acevedo & Co. to be used as best may suit them, I issue the present, viséed by the substitute Alcalde, in Lares, July 9, 1900.

(Signed) MANUEL CUEBAS.

Viséed,
ANTONIO COLLAZO,
Substitute Alcalde.

195 No. 189.

Salvador Picornell y Cardona, Lawyer—Notary.

Deed.

Granting rights and interests. Executed by divers persons in favor of Virgilio Acevedo y Hernandez.

At Lares 5th of July, 1900.

Porto Rico.

Rubber stamp: Salvador Picornell Cardona, Lawyer, Lares, P. R.
196 Number One Hundred and Eighty-Nine.

Lares, Island of Porto Rico, fifty day of July, One thousand nine hundred.

Before me, the Licenciate Don Salvador Picornell y Cardona,

lawyer and acting notary in this town and belonging to the Association of Notaries of this Island, residing and having my office in the said town, as headquarters of the notarial district, the required number of signatory witnesses to the deed being present in my office, appeared: Ramon Roman, married, residing in the barrio of Callejones; Dandalio Rivera, married, residing in the barrio of Callejones; Celestino Quiles, married, residing in the barrio of Piletas; José Gonzales y Gonzales, married, residing in the barrio of Callejones; Enrique Latorre, single, residing in the barrio of Callejones; Juan Pedro Hernandez, married, residing in the barrio of Piletas; Marcelino Latorre, single, residing in the barrio of Callejones; Juan Hilario Olavarria, single, residing in the barrio of Piletas; Ignacio Cruz, married, residing in the barrio of Callejones; Zenon Antonio Perez, married, residing in the barrio of Callejones; Juan Andres Cardona, married, residing in the barrio of Callejones; Filipe Lopez, married, residing in the barrio of Piletas; Bartolomé Lopez y Lopez, married, residing in the barrio of Piletas; Ramon Quintana, single, residing in the barrio of Callejones; Elias Alicea y Lopez, single, residing in the barrio of Piletas; Juan Abad Adames, married, residing in the barrio of Callejones; Juan Maria Rodriguez, single, residing in the barrio of Callejones; Manual Velez, married, residing in the barrio of Callejones; Francisco Javier Soto Mayor, widower, residing in the barrio of Callejones; Pedro Carmen Gonzales, married, residing in the barrio of Callejones;
197 Evaristo Roman, single, residing in the barrio of Callejones; Wenceslao Rosado, single, residing in the barrio of Callejones; Juan Irene Cardona, single, residing in the barrio of Callejones; Pedro Nelson, married, residing in the barrio of Callejones; José Antonio Pagan, married, residing in the barrio of Callejones; Manuel Ramos, married, residing in the barrio of Piletas; José Alicia Santiago, married, residing in the barrio of Piletas; Roman Abad Toledo, married, residing in the barrio of Callejones; Francisco Cruz Fernandez, married, residing in the barrio of Callejones; Manuel Higinio Gonzalez, married, residing in the barrio of the Pueblo; José Doles Cruz, married, residing in the barrio of Callejones; Antonio Cruz Fernandez, single, residing in the barrio of Callejones; Gregorio Ramos, married, residing in the barrio of Callejones; Alfonso Lopez, married, residing in the barrio of Callejones; Benito Santiago, married, residing in the barrio of Callejones; Ramón Sanchez, single, residing in the barrio of Callejones; Bartolomé Toledo, married, residing in the barrio of Callejones; Maximo Nieves, married, residing in the barrio of Callejones; Celestino Cardona, widower, residing in the barrio of Callejones; José Morales, married, residing in the barrio of Callejones; Juan Bautista Rodriguez, married, residing in the barrio of Callejones; Manuel Lopez, married, residing in the barrio of Piletas; Pedro Torres Quiles, single, residing in the barrio of Callejones; Manuel de Jesus Ramos, married, residing in the barrio of Callejones; Tomas Muniz, married, residing in the barrio of Callejones; Luis Gonzales, married, residing in the barrio of Piletas; Juan Soto, single, residing in the barrio of

Callejones; Juan Avila, married, residing in the barrio of Callejones; José Miguel Colón, married, residing in the barrio of Callejones; Alonso Velez, married, residing in the barrio of Callejones; Santos de Soto, widow, residing in *in* the barrio of Callejones; Polidor Santiago, widower, residing in the barrio of Callejones;
198 Pedro Velez y Roble, married, residing in the barrio of Piletas; all being of age, agriculturists of this vicinity, and residing in the barrios of this municipal district as has been said; and Virgilio Acevedo y Hernandez of age, married and a merchant of this vicinity.

I certify:

That I know personally the conjugal state, the profession and the residence of Acevedo y Hernandez, and regarding the other persons present, the witnesses to the deed assure me in turn that to their knowledge they are the persons named in this deed and they possess in my judgment the necessary legal capacity to execute the present deed transferring their rights and interests. They state, and I know of nothing to the contrary that:

First, that the persons present, with the exception of Virgilio Acevedo y Hernandez, consider themselves the joint owners and possessors of a parcel of real property in the barrios of Callejones and Piletas of this jurisdiction and which parcel of real property is composed of four thousand one hundred and thirty-three cuerdas, equivalent to one thousand six hundred and twenty-four hectares, forty-three acres and forty-three centiares, planted to coffee, and the rest pasture and brush land. It is bounded on the north by the lands of José Gregorio Velez; on the south by lands of José Miguel Colón; on the east by the River Camuy; and on the west by lands of Juan José Lopez, and it is marked by the following landmarks: From the foot of a Yagrumo tree which is on the banks of the Camuy River and opposite to a mulberry and a black Capá tree in the plain of the Capaes, adjoining with unowned and unclaimed lands; from here westerly at a distance of a cuerda to a small board which is on the top of a wall, continuing in
199 the same direction nine and two-thirds cuerdas to a Guaraguado and a Bobo tree in the public path which leads to Quebradillas, seventeen cuerdas along the path of the Cedars, thirty-three cuerdas to the "Cueva de Pajita," ten and three quarters cuerdas to a Lechecillo, a Joya and a Iguerillo tree, the first mentioned of which is in the Mazamora brook; and the other two on the opposite banks, eleven and one-third cuerdas, to a hollow and brook, which are on the path "Ceiba Mocha"; and from here, twenty-six cuerdas to the Azafrá, Ceiba and two Guaraguado trees; from here in a northerly direction, thirty-four cuerdas, with a Tabloncillo tree, adjoining now abandoned lands which formerly belonged to Juan Perez, and at the side with ten and one half cuerdas to a Jacana tree which divides the land of the said Perez and unclaimed lands laterally from these lands of Juan Diaz, northerly with eighteen and one-half cuerdas to a White Capa tree adjoining with Diaz and Juan José Gonzales; in an easterly line from here seven and one-

half cuerdas to a Jobo tree adjoining Gonzales and Manuel de los Santos Gimenez; and in a southerly direction twenty cuerdas to a Jobo tree stake; and its boundaries with Ciprian de la Cruz; another twenty cuerdas easterly to another Jobo tree stake and northerly twenty cuerdas belonging to the said Ciprian to a Cedro Hembra, which is in a brook known as the Brook of the Hollows. And from here one cuerda to a Bobo tree, in front of a clump of three Yayas trees, they being on the eastern boundary of waste lands forty-six and two thirds cuerdas to a Corcho tree, which is in the path the Resolladero del Toro, and continuing in the same direction five and two thirds cuerdas to a stump of Guaraguado, a Yagrumo and a Yaya tree, adjoining the district or jurisdiction of Utuado and collaterally from the same to the south ten cuerdas to a Corcho; and from here twenty-eight cuerdas to the headwaters of the
200 Camuy River; and following different roads with directions and distances to the Yagrumo tree as the point of beginning.

The aforementioned persons base their right on the circular letter sent out by the former Captain General of this Island, Fernando de Norzagaray, of June the third, one thousand eight hundred and fifty-four, and a certified copy of which, dated November the fifteenth, one thousand eight hundred and ninety-nine, by the acting secretary of this municipality, and bearing the approval of the Alcalde as shown to me, says literally:

"Manuel Cuevas y Grappe, acting secretary of the Ayuntamiento "and Municipal Alcaldia of this town of Lares, certifies that in the "archives of the secretary's office in my charge there is found a "package of papers marked with the number twenty, which con- "tains the official Gazette for the years one thousand eight hundred "and fifty-three and one thousand eight hundred and fifty-four, and "having examined the ones pertaining to the latter year, there is "found in number 67 of the Gazette of the government dated the "sixth day of June, in the first column, a circular, which copied "literally is as follows:

"The government and office of the Captain General of the Island "of Porto Rico. Circular number 77. The system of apportion- "ment of unclaimed lands to national and foreign colonists under "the expressed condition that they cultivate and make them pro- "ductive, has been very profitable to this Island, because to it is "owing the development and extension of its agriculture. Nev- "ertheless, experience has shown that the same system has in it "elements which neutralize the benefits which it has given,—in "human affairs evil is so akin to good—the abuse of sound prin- "ciples. Persons who were not in favorable circumstances to fulfil "that indispensable condition, asked and obtained grants of
201 "land which after many dozens of years are found covered "with forests and uncultivated as in its primitive state, or "perhaps worse, because on the strength of the concession useful "lumber has been taken out and only the stumps and underbrush "have been left, thereby making the lands less desirable to those "who intended cultivating them. In the meanwhile the public

"wealth has lost all that the said lands could and should produce "and the public treasury the small taxes at which the lands have "been assessed. There being found in this state a great part of the "rich and extensive lands granted in 1776 to his Most High Ex- "cellency the Duke de Mahon Crillón, this office of the Captain "General a long time since called the attention of the government "of His Majesty by cause of which there was issued on the fifth "day of September, 1852, a royal order "declaring that it was neces- "sary without delay to cause to revert to the Crown the 27 caballerias "which without care and cultivation by the grantee are found in "the districts of Rio Grande and Lares, and to this end it is neces- "sary to commence and finish with brevity the proper proceedings. "In consequence of this the necessary reports were called for and "examined by the Board of Lands, as were also the concessionary "clauses and orders cited and it decided in a session held under my "chairmanship to declare reverted to the Crown all the aforemen- "tioned lands; and at the same time that the public should be in- "formed so that those persons who could comply with the condi- "tions required by the different orders up to now given or that "should be given in the future for their prompt and better culti- "vation, should make application for them if they thought fit. "And I communicate this to you for your information, and for "other purposes. May God preserve you many years. Porto Rico, "June 3rd, 1854. Fernando de Norzagary. To the magistrates "and ordinary alcaldes of the towns of this Island. As Sec-
202 "retary of this Government and office of the Captain Gen- "eral, I certify that the above mentioned circular has been "sent out by order of His Excellency, and also its insertion in the "Government Gazette. Porto Rico, June 3rd, 1854. Francisco "Garcia. For delivery to Messrs. Acevedo and Company, merchants "in this town, at their request and by order of the alcalde, I issue "these presents. Examined and stamped by the said officials in "Lares the 15th day of November, 1899. Manuel Cuebas. Ap- "proved. The Alcalde, Acevedo. There is a stamp which says, Al- "caldia Municipal of Lares. Agrees exactly and faithfully with "the certificate presented to me to which I refer and return."

Second.

The persons referred to have possessed from that date some by purchase and others by inheritance the lands referred to, and have agreed with Virgilio Acevedo y Hernandez to make a joint grant of all the rights and interests which they may have in the same. They base their declarations of ownership to the said lands in an act regarding the granting of unclaimed lands, a certified copy of which has been presented to me, and the pertinent parts of which are as follows:

"Manuel Cuevas y Grappe, acting secretary of the Ayuntamiento "and Alcaldia Municipal of the town of Lares. I certify that in the "archives in this secretaryship in my charge, there is a record which "copied in its entirety is as follows: Secretary of the Board of Lands

" In a session held on the 22nd day of the current month, there was " taken up the resolution of the Municipal Board of that town, on " the petition of its syndic in which he informs us that seventy- " four persons in this vicinity were given possession of the lands " which belonged to the Duke of Mahon Crillón, with the approval " of the government of this Island, the list of which persons, I
" am sending, each one of whom has been in possession of
203 " his respective parcel, paying his taxes on the land punctu-
" ally. Therefore they should be considered entitled not " only to be favored by the superior board but also to be put in " possession with less expense than others are compelled to make for " the same object. In view of what has been said, it was resolved in " so far as the land in question is concerned to grant it to those in " possession of it, on condition that no one receive more than one " hundred cuerdas, and that they obligate themselves to take out " within the term of two months the necessary commissions to make " the survey and pay the legal fees. The contents of which I " copy and send to you so that you may inform those interested " at the same time making a return to me and for any other pur- " poses. May God preserve you for many years. Porto Rico, De- " cember 27th, 1854. (Signed) Eusebio Nunez, Ordinary Alcalde " of Lares,. Lares, January 2, 1855. The document dated Dec. 27, " of the year last past which the secretary of the Superior Board " of Unclaimed Lands sent to this office has been received, which " shall be given the most conspicuous place in this notice so as to " comply punctually with the orders which the said Board thought " proper to issue; and for this purpose orders shall be issued to the " comisarios of the barrios of Cibao and Lares so that they may sum- " mon and notify the individuals who by order of the proper author- " ity are in possession of the lands which formerly were called of His " Excellency the Duke de Mahon Crillón, and which today are de- " clared unclaimed. Said individuals shall be informed of the " order of the Board of Unclaimed Lands inserted in the before " mentioned document and to certify that they have been so in- " formed. Those that can write shall subscribe it and those who " cannot shall have it done for them by some neighbor. I direct " order and sign. The Alcalde Ordinary, Frutos Perez. Given be-
" fore us to which we bear witness. Frutos Perez. Attendant
204 " Rafael Villafañes. The notification follows:
"To deliver to Acevedo and Company, merchants of this " town at their request, I issue these presents with the approval of the " Alcalde in Lares on the 15th day of November, one thousand eight " hundred and ninety-one. Manuel Cuebas. Approved, the Alcalde. " Acevedo."

Agrees well and exactly with the certificate presented, to which I refer and return.

Value.

The transfer is made for the sum of eight thousand pesos of the provincial money current in business which the grantors confess in

my presence having received and in the presence of the witnesses present, from the hands of the grantee to their entire satisfaction; for which they execute in his favor the best possible receipt, which he may desire for security, subrogating him to their place and rights so that he may freely dispose of the said rights and interests.

Third. Virgilio Acevedo y Hernandez being informed of this instrument accepts it as it is written as it states faithfully the agreement. They having been informed by me of their right to read this instrument, waived it and it was read to them. Those who can do so, have signed it, and those who cannot have had it signed for them at their request by the witnesses to this instrument who are known to me, Antonio Hernandez Abreu and Jose Santiago Fuentes, who are present and of this neighborhood and whom I know to be above reproach, to be of age, and for all said by those present, I, the notary, swear. Polidor Sanitago; Pedro Nerzon, Jose Miguel Colon, Pedro Carmen Gonzales, Filipe Lopez, Bartolomé Lopez. Then follow the signatures: Alonso Velez, Zenon Ato. Perez, Francisco Javier
205 de Soto Mayor, Sandalio Rivera, Manuel Lopez, J. A. Hernandez, José Santiago; Virgilio Acevedo, (Sealed) Lic. Salvador Picornell Cardona.

This is the first copy for the grantee of the instrument of its number which corresponds to its year and I issue it on seven sheets of special paper of the second series. It agrees with its original to which I swear, and stamp, seal, sign and rubricate it in Lares the nineteenth day of the month, and year of its execution.

Rubber stamp: Salvador Picornell Cardona Abogado Lares, P. R.

(Signed) SALVADOR PICORNELL CARDONA.

206 COPY OF EXHIBIT "B" FOR DEFENDANT.

Supreme Court of Porto Rico.

Office of the Secretary.

I, Antonio F. Castro, Secretary and Reporter of the Supreme Court of Porto Rico, do hereby certify: that from the files and records of this Office it appears that El Barón Du Laurence D'Oisclay brought six different actions of unlawful detainer in the Municipal Court of Aguadilla against the following named defendants: Pedro Torres Quiles; Ignacio Cruz; Tomás Muñiz; Juan Miranda; José Miguel Colón; and Francisco Javier Soto; that the said six actions were brought with regard to lands situated in the District of Aguadilla and composed of 4133 cuerdas, the full ownership of which belongs to the said Baron and are recorded in his favor in the Register of Property of Aguadilla, which ownership was declared in his favor by final judgment of the Supreme Court of Porto Rico, rendered on the 22nd of June 1904; that the trials of the cases brought against Ignacio Cruz, Tomás Muñiz, Juan Miranda, and José Miguel Colón were had in the Municipal Court of Aguadilla on the 14th of December, 1901, and the trials of the cases against Pedro Torres

Aquiles and Francisco Javier Soto were had in the same court on the 15th of December, 1904; that in the said six cases judgment was rendered by the Municipal Court of Aguadilla in favor of the plaintiff and the defendants took an appeal to the District Court of Aguadilla, and in the day set for the hearing of said appeal, the defendants made a motion to the District Court requesting the dismissal of the action by failure of the plaintiff or appellee to appear before said court, which motion was granted and the six actions dismissed; that plaintiff filed a petition for certiorari in the Supreme Court, the writ was issued, and after proper proceedings, the Supreme Court reversed the orders of the lower court
207 and directed the same to proceed to hear the appeals, the decisions of the Supreme Court bearing date of April 30th and May 12th 1906, in the cases of Francisco Javier Soto and Juan Miranda, respectively; and of May 11th, 1906, in the other four cases.

I further certify, that the said Baron Du Laurence D'Oiselay brought another suit before the same Municipal Court against Juan Arbona for collection of money as rents due with regard to the above said parcel of land and the same proceedings were had as in the other cases stated, which latter case was also brought by certiorari to the Supreme Court, which, on the 30th of April, 1906, quashed the writ and dismissed the application, because the party had another remedy and the writ of certiorari did not lie.

In witness whereof, I hereunto set my hand and the Seal of said Supreme Court of Porto Rico, this 12th day of June, 1909.

[Seal of the Supreme Court of Porto Rico.]

(Signed) A. F. CASTRO,
Secretary and Reporter of the Supreme Court.

208 **In the District Court of the Judicial District of San Juan, P. R.**

Alberto Marín Marien, Esq., Secretary of the District Court of the Judicial District of San Juan:

I certify, that having examined the records of the case instituted in the District Court of San Juan by Mr. Pierre Emmanuel, Baron du Lauren d'Oiselay, against the Treasurer of Porto Rico, it appears that an appeal was taken to the Supreme Court, the decision of which appears in a judgment of June 22, 1904; that an answer was made to said complaint by the Fiscal of the District Court of San Juan on behalf of and as the representative of the Treasurer of Porto Rico, and the decision rendered by the District Court in favor of the plaintiff; and in said records the People of Porto Rico does not appear as a party defendant, but does so appear in the judgment of the Supreme Court rendered in this case, and which was communicated to the District Court on August 26, 1904.

And at the request of the Attorney General of Porto Rico, I issue the present certificate under my hand and seal, in San Juan, this 22nd day of June, 1909.

(Signed) A. MARÍN MARIEN,
Secretary of the Court.

209 EXHIBIT "C" FOR DEFENDANT.

I, Armando Paoli Domenech, Municipal Treasurer of Lares, hereby certify: That in the stub receipt books on file in this office and pertaining to fiscal years 1895-96 to 1898-99 there appear the stubs for the general assessment of the lands of the Duchess de Mahon Crillón as follows:

Year	1895 to '96	Stub No.	167	amount	.....	65.40
"	1896 " '97	"	" 159	"	.....	65.07
"	1897 " '98	"	" 167	"	.....	62.14

And in order to deliver the same to Mr. Charles Mead I issue this certificate to be approved by the Alcalde in Lares this ninth day of June, 1909.

O. K.

(Signed) ARMANDO PAOLI,
Municipal Treasurer.

(Signed) ANTONIO C. GONZALEZ, *Alcalde.*

(There is affixed to the original certificate the seal of the office of the Alcalde of the Municipality of Lares.

210 COPY OF EXHIBIT "D" FOR THE DEFENDANT.

Treasury Department of Porto Rico.

Office of the Treasurer.

Address all communications to the Treasurer of Porto Rico.

The undersigned, Treasurer of Porto Rico, hereby certifies that he has caused the records of his office to be examined and that it does not appear from such examination that the Treasury Department of Porto Rico has collected any rents, moneys or property of any nature from the farm of four thousand, one hundred and thirty-three (4,133) cuerdas of land located in the Municipality of Lares said to belong to the Baron du Laurens d'Oiselay, formerly of the Duchess de Mahon Crillon; and the undersigned further certifies that between the years 1901 and 1905 said farm of four thousand, one hundred and thirty-three (4,133) cuerdas located in the Municipality of Lares was not declared for purposes of taxation by either the Baron du Laurens d'Oiselay, or the Duchess de Mahon Crillon or their legal representatives.

(At the request of the Attorney General of Porto Rico, this certificate is issued without cost.)

SAM'L D. GROMER,
Treasurer of Porto Rico.

San Juan, P. R., June 11, 1909.

[Seal Treasurer for the Island of Porto Rico.]

211 COPY OF EXHIBIT "E" FOR THE DEFENDANT.

Laurence H. Grahame, Commissioner.

OFFICE OF THE COMMISSIONER OF THE INTERIOR FOR PORTO RICO.
SAN JUAN.

JUNE 11, 1909.

To whom it may concern:

I hereby certify that a careful search of the records and files of this Department has been made and that so far as appears from said files and records, this Department has never taken possession of a certain tract of land comprising 4,133 cuerdas, belonging to the Baron du Laurens d'Oiselay or to the Duchess Mahon Crillon, located in the Barrios of Piletas and Callejones, Municipality of Lares, that no contracts or leases have been made by this Department affecting said land and no income of any character collected or received therefrom.

J. H. INCE,
Acting Commissioner of the Interior.

[Seal of the Commissioner of the Interior for Porto Rico.]

212 *Petition for Appeal.*

Petition for Appeal.

(Filed June 13, 1910.)

In the District Court of the United States for Porto Rico.

No. 574. Law.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff and Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Petition for Appeal.

To the Hon. Bernard S. Rodey, Judge of the above-entitled Court:

The above named Defendant, in the above-entitled cause, conceiving itself aggrieved by the order and judgment made and entered by the above entitled Court in the above entitled cause under date of September 7, 1909, wherein and whereby it was ordered and adjudged that the Plaintiff, Pierre Emmanuel, Baron de Laurens d'Oiselay, do have and recover of and from the Defendant, the People of Porto Rico, the sum of Seven Thousand, Four Hundred and Fifty Dollars ($7,450.00), together with his costs, does hereby appeal to the Supreme Court of the United States from said judgment

for the reasons set forth in the assignment of Errors, which is filed herewith, and prays that this petition for said appeal may be allowed, and that a transcript of the record of the proceedings and papers upon which said judgment was based, duly authenticated, may be sent to the United States Supreme Court at Washington, D. C.

Dated at San Juan, this 13th day of June, 1910.

FOSTER V. BROWN,
Attorney-General of P. R. and
Attorney for Defendant and Appellant.

213 *Assignment of Errors.*

Filed June 13, 1910.

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff & Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant & Appellant.

Assignment of Errors.

The Defendant prays an appeal from the final judgment of this Court to the Supreme Court of the United States, and assigns for error:

I.

The Court erred in over-ruling the original demurrer to the complaint filed in the above action.

II.

The Court erred in over-ruling the amended demurrer to the complaint filed.

III.

The Court erred in entertaining jurisdiction, because for all necessary purposes of Government, the Defendant, The People of Porto Rico, is a sovereign, and not liable to suit without its consent.

IV.

The Court erred in over-ruling the motion of Defendant, made before entering upon the trial of the cause, for judgment upon the pleadings.

214 V.

The Court erred in rendering judgment against the Defendant, because there is no evidence to support the judgment.

VI.

The Court erred in over-ruling the motion made by Counsel for Defendant, at the close of Plaintiff's testimony, for judgment for Defendant.

VII.

The Court erred in admitting in evidence upon the trial, over the objection of the Defendant, a translation of a decision of the Supreme Court of Porto Rico in which the property was adjudicated to Plaintiff by virtue of a suit which was instituted for the recovery thereof. It was error to admit this record, because neither Appellant nor its privity in estate was a party to the suit. (Plaintiff's Exhibit "A".)

VIII.

The Court erred in admitting in evidence upon the trial of the cause, over the objection of Defendant, a letter and certificate of the Treasurer of Porto Rico embodying a communication in which the Treasurer of Porto Rico dispossessed Plaintiff of the ownership of the land and ordered the inscription of the same in the name of the People of Porto Rico. (Plaintiff's Exhibit "C".)

IX.

The Court erred in admitting in evidence upon the trial of the cause, over the objection of Defendant, a letter from the Treasurer of Porto Rico to the Plaintiff directing Plaintiff to litigate his title in a court of Justice. (Plaintiff's Exhibit "D".)

215 X.

The Court erred in admitting in evidence upon the trial of the cause, over the objection of Defendant, a certificate of the Secretary of the Municipal Court of Lares in which reference is made to the documents and communications of the Treasurer in which the order was given to notify the "colonos" that The People of Porto Rico was the owner thereof and that the Baron was no longer the owner (Plaintiff's Exhibit "E".)

XI.

The Court erred in admitting the testimony of the witness Miguel Coll, over the objection of the Defendant, as to the rental value of the property in controversy, because the testimony related entirely to the value of the property for years prior to the time the property was alleged to be possessed by the People of Porto Rico, and because the witness disclaimed any knowledge of values during the years it is alleged that the People of Porto Rico possessed the property.

XII.

The Court erred in admitting in evidence, over the objection of Defendant, the testimony of Emilio Denasaredo as to what occurred between the Plaintiff and other persons after the date of the judg-

ment of the Supreme Court of Porto Rico adjudicating the ownership of the land.

XIII.

The Court erred in admitting in evidence, over the objec-
216 tion of Defendant, the testimony of the witness Emilio Denasaredo as to who had or was about to take possession of the property.

XIV.

The Court erred in admitting in evidence, over the objection of Defendant, the testimony of Emilio Denasaredo as to the yearly income produced from the "Bajita" Cave.

XV.

The Court erred in sustaining the objection of Counsel for Plaintiff to the questions propounded by Counsel for Defendant to the witness Emilio Denasaredo as to whether or not the "colonos" had executed deeds to Don Brijilio Acevedo.

XVI.

The Court erred in admitting in evidence, over the objection of Defendant, the testimony of the witness Miguel Coll as to whether or not the Baron received any money from the property.

Wherefore, said Defendant and Appellant prays that the judgment of said District Court of the United States for Porto Rico be reversed, and that said Court be directed to dismiss the action.

Dated San Juan, June 13, 1910.

(Signed) FOSTER V. BROWN,
Attorney-General of P. R.,
Attorney for Defendant and Appellant.

217 *Copy of Order Allowing Appeal.*

Filed June 13, 1910.

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff & Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant & Appellant.

Order.

In this case, on motion of Foster V. Brown, Attorney General of Porto Rico and counsel for defendant, it is ordered that an appeal

to the Supreme Court of the United States from the final judgment heretofore filed and entered herein on the 7th day of September 1909, be and the same is hereby allowed, and that a certified transcript of the record, papers and all proceedings be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars ($500.00) the same to act as a supersedeas bond and also a bond for costs on appeal.

Dates this 13th day of June, 1910.

(Signed) B. S. RODEY,
District Judge.

218 *Copy of Order Authorizing Clerk of Court to Accept Certified Check as a Bond Upon Appeal.*

Filed June 13, 1910.

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff & Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant & Appellant.

Order.

The Clerk of the above entitled court is hereby ordered, authorized and directed to accept from the above named defendant and appellant, The People of Porto Rico, a certified check of the Treasurer of Porto Rico, in the sum of $500.00, to remain in the custody of the clerk of this court, to be deposited in the registry bank account, the same to act as a supersedeas bond and also a bond for costs on appeal in the above entitled cause.

Done in open court this 13th day of June, 1910.

(Signed) B. S. RODEY,
District Judge of the United States for Porto Rico.

219 *Clerk's Certificate of Deposit.*

(Filed July 16th, 1910.)

In the District Court of the United States for Porto Rico.

Law. No. 574.

PIERRE EMMANUEL DU LAURENS D'OISELAY
vs.
THE PEOPLE OF PORTO RICO.

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico hereby certify that there was deposited in the Registry

of this Court on July 5th, 1910, by the People of Porto Rico the sum of Five Hundred Dollars, ($500.00) as a supersedeas bond in the above entitled cause pursuant to an order of court in that regard entered of record on the Journal of this Court under date of June 13, 1910.

[SEAL.]

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.

220 In the District Court of the United States for Porto Rico.

No. 574. Law.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff and Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Præcipe for Record.

To the Clerk of the above-entitled Court:

In accordance with the order of the Judge of the above-entitled Court made and entered on the 13th day of June, 1910, allowing an appeal to the Supreme Court of the United States on behalf of the above named Defendant, you are hereby directed to prepare a duly authenticated transcript of the record, proceedings and papers in the above entitled action, as per attached list.

(Signed) FOSTER V. BROWN,
Attorney General of Porto Rico, and
Attorney for Defendant and Appellant.

221 (1). Copy of Complaint.
(2). Copy of Summons.
(3). Copy of Demurrer.
(4). Copy of Answer to Complaint.
(5). Minute Order of November 4, 1908.
(6). Copy of Amended Demurrer.
(7). Minute Order of February 16, 1909.
(8). Copy of Court's Opinion over-ruling Demurrer, Feb. 16, 1909.
(9). Copy of Stipulation waiving jury trial.
(10). Copy of Amended Answer to Complaint.
(11). Minute Order of June 10, 1909.
(12). Minute Order of June 11, 1909.
(13). Minute Order of September 7, 1909.
(14). Copy of Opinion filed September 7, 1909.
(15). Copy of Motion for New Trial, September 11, 1909.
(16). Minute Order of November 1, 1909.
(17). Minute Order of February 12, 1910.
(18). Copy of Opinion over-ruling Motion for a New Trial.
(19). Minute Order of April 9, 1910, fixing supersedeas bond, etc.

(20). Minute Order of April 9, 1910, adjourning all matters over the Term.

(21). Copy of wireless extending time 90 days, May 18, 1910.

(22). Minute Order of May 18, 1910.

(23). Copy of Notice that Appellant will move for approval of Bill of Exceptions and affidavit of Juan Cordero.

(24). Acknowledgment of service of proposed Bill of Exceptions.

(25). Copy of Motion to strike from files order extending time to file Bill of Exceptions.

(26). Copy of Notice of Settlement of Bill of Exceptions.

(27). Minute Order of June 10, 1910, on Motion to strike.

222 (28). Minute Order of June 13, 1910, denying motion to strike the Areogram Order entered under date of May 18, 1910, in which time is extended to file Bill of Exceptions; granting a Nunc Pro Tunc Order as of date of April 9, 1910, in which defendant may file and serve Bill of Exceptions granting an Appeal to the Supreme Court of the United States and fixing supersedeas and cost bond on appeal in the sum of Five Hundred Dollars ($500.00); authorizing the Clerk of this court to accept certified check of the Treasurer of Porto Rico for the amount of said supersedeas bond; signing Bill of Exceptions nunc pro tunc as of April 9, 1910.

(29). Copy of Opinion of June 13, 1910.

(30). Copy of Motion for Order Nunc Pro Tunc.

(31). Copy of Order Nunc Pro Tunc.

(32). Bill of Exceptions.

(33). Copy of Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", for Plaintiff.

(34). Copy of Exhibits "A", "B", "C", "D", "E" for Defendant.

(35). Copy of Petition for Appeal.

(36). Copy of Assignment of Errors.

(37). Copy of Order Allowing Appeal and Fixing Bond.

(38). Copy of Order Authorizing Clerk to accept certified check of the Treasurer of Porto Rico in lieu of bond.

(39). Copy of Certificate that check has been deposited.

(40). Original Citation.

(41). Copy of Præcipe for Record.

(42). Clerk's Certificate.

(Signed) FOSTER V. BROWN,
Attorney General of Porto Rico, and
Attorney for Defendant and Appellant.

223 In the District Court of the United States for Porto Rico.

#574. Law.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff and Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant and *Appellee*.

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing 222 typewritten

pages, numbered from 1 to — inclusive, to be a true and correct copy of the record and proceedings called for in the præcipe for transcript of record on appeal as same remains of record and on file in the above entitled cause in the office of the Clerk of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 25th day of July, A. D. 1910, at San Juan, P. R.

[Seal of United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk Dist. Court of the U. S. for P. R

224 In the District Court of the United States for Porto Rico.

No. 574. Law.

PIERRE EMMANUEL, Baron de Laurens d'Oiselay, Plaintiff and Appellee,
vs.
THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Citation on Appeal.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States to Pierre Emmanuel, Baron de Laurens d'Oiselay, Plaintiff, and Federico Degetau and Bonifacio Sanchez, his attorneys of record:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, on the 11th day of August, 1910, pursuant to an order allowing an appeal, filed and entered in the Clerk's Office of the District Court of the United States for the District of Porto Rico, from the final judgment signed, filed and entered on the 7th day of September, 1909, in that certain suit at law, No. 574, wherein the People of Porto Rico is Defendant and Appellant, and you are Plaintiff and Appellee, to show cause, if any there be, why the judgment rendered against the said Defendant and Appellant, as in said order allowing the appeal mentioned, should not be corrected, and why speedy justice should not be done
225 to the Defendant in that behalf.

Witness, the Hon. Bernard S. Rodey, United States Judge for the District of Porto Rico, this 13 day of June, 1910, and of the Independence of the United States the One Hundred and Thirty-Fourth.

B. S. RODEY,
District Judge.

Attest:
JOHN L. GAY, *Clerk.*

Copy received and service acknowledged of the within and foregoing citation this 13" day of June, 1910.

FEDERICO DEGETAU,
BONIFACIO SANCHEZ,
Attorneys for Plaintiff and Appellee.

226 [Endorsed:] G. In the District Court of the United States for P. R. #574. Law. *Law, No. 574.* Pierre Emmanuel, Baron de Laurens d'Oiselay, Plaintiff & Appellee, vs. The People of Porto Rico, Defendant & Appellant. Citation on Appeal. 6/13-10. A. Filed Clerk's Office, United States District Court, June 13, 1910. John L. Gay, Clerk of the Court.

227 In the Supreme Court of the United States.

No. 668.

THE PEOPLE OF PORTO RICO, Appellant,
v.
PIERRE EMMANUEL, Baron du Laurens d'Oiselay, Appellee.

Stipulation.

It is hereby stipulated between the appellee, by his attorney, Federico Degetau, and the appellant, by its attorney, Foster V. Brown, Attorney General of Porto Rico, that the certified copy of the record of proceedings held in the District Court of the United States for Porto Rico on the 18th of May, 1910, and hereto attached and made a part hereof, and which said record was, through inadvertence, omitted by the clerk of the District Court of the United States for Porto Rico from the transcript of record on appeal in the above entitled cause, filed in the above entitled court on the — day of ——, 1910, be, and the same may be sent to the clerk of the above entitled court at Washington, D. C., and filed by him with the record heretofore filed in the above entitled cause, and the same to have force and effect therein, as though it had originally been made a part thereof; and the appellee herein, hereby waives any and all objections thereto on account of the same not having been originally filed with said transcript of record.

Dated, San Juan, Porto Rico, this 30th day of January, 1911.

FEDERICO DEGETAU,
Attorney for Appellee.
FOSTER V. BROWN,
Attorney General of Porto Rico and
Attorney for Appellant.

228 In the District Court of the United States for Porto Rico.

Journal Entry of May 18, 1910.

WEDNESDAY, *May* 18, 1910

Court met, pursuant to adjournment, at 10:30 o'clock A. M.
Present as before.
The following proceedings were had, that is to say:

* * * * * * *

Whereupon Court adjourns until its own further order within the term.

* * * * * * *

I, Rafael Guillermety, Clerk of the District Court of the United States for the District of Porto Rico, do hereby certify that the foregoing is a true and correct copy of the opening and closing entries in the Journal, under date of May 18, 1910, and that the same was inadvertently omitted from the Record on Appeal in the case of Pierre Emanuel, Baron de Laurens d'Oiselay vs. The People of Porto Rico.

In Witness whereof I hereunto set my hand and the seal of this Court, this 17th day of January, A. D. 1911, at San Juan, P. R.

[Seal of United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMETY, *Clerk.*

229 [Endorsed:] Insular Bureau, War Department, Mar. 1, 1911. 22461/5.

230 [Endorsed:] File No. 22,289. Supreme Court U. S. October Term, 1910. Term No. 668. The People of Porto Rico, Appellant, vs. Pierre Emanuel, Baron de Laurens d'Oiselay. Stipulation of counsel and addition to record. Filed March 2, 1911.

Endorsed on cover: File No. 22,289. Porto Rico D. C. U. S. Term No. 668. The People of Porto Rico, appellant, vs. Pierre Emanuel, Baron de Laurens d'Oiselay. Filed August 9th, 1910. File No. 22,289.



Office Supreme Court U. S.
FILED
NOV 30 1910
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910/1914

4

No. [redacted].

THE PEOPLE OF PORTO RICO, APPELLANT,

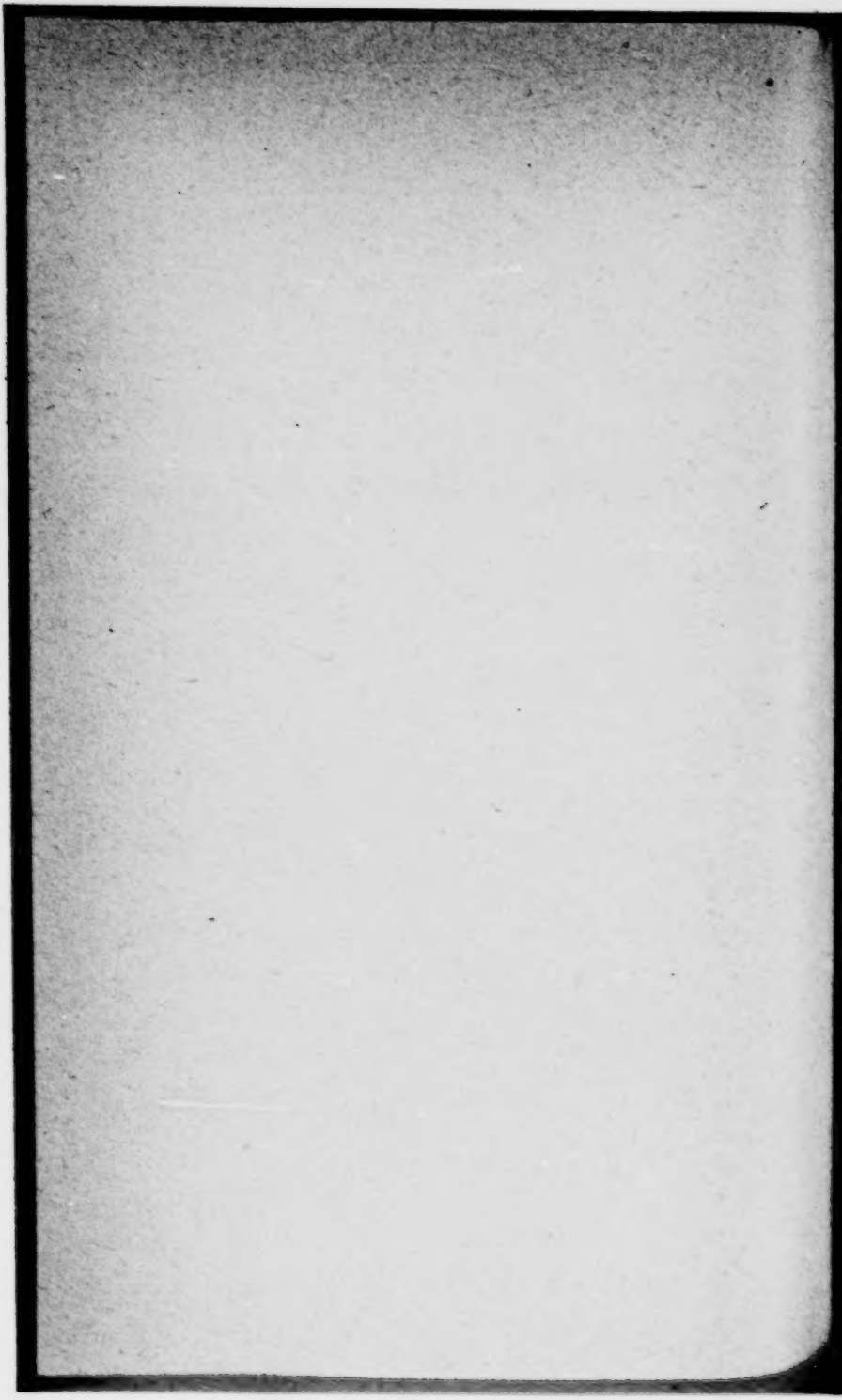
vs.

PIERRE EMANUEL, BARON DE LAURENS D'OISELAY.

MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT OF SAME.

FEDERICO DEGETAU,
Counsel for Appellee.

(22,289.)



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 668.

PIERRE EMANUEL, BARON D'OISELAY,
PLAINTIFF AND APPELLEE,

vs.

THE PEOPLE OF PORTO RICO, DEFENDANT AND APPELLANT.

MOTION TO DISMISS APPEAL OR AFFIRM THE JUDGMENT.

Now comes the above-named appellee, by his counsel of record, and hereby moves this court to dismiss the appeal taken by the above-named defendant and appellant from the District Court of the United States for Porto Rico in said cause, upon the following grounds, to wit:

I.

Because said appeal was wrongfully granted by the said District Court of the United States for Porto Rico—

First. In permitting the bill of exceptions to be settled and signed after the term had elapsed in which the new trial was denied, not existing nor having been alleged any extraordinary circumstances, nor any agreement of the parties.

Second. Because the express order of the District Court of the United States for Porto Rico extending ninety days the time for settling the bill of exceptions was given after the term had elapsed in which the motion for new trial was denied, said order being given by wireless telegraph from the high seas, by a judge in vacation, not even certain of whether he was within the three-mile limit of the district of Porto Rico, and without any notice being given to the appellee of the petition for said order.

Third. Because the orders of June 13, 1910, given by the District Court of the United States for Porto Rico to anticipate the actual time of filing the bill of exceptions and perfecting the appeal by entering an order *nunc pro tunc* as of April 9, 1910, are a nullity, and the entire transcript of testimony offered as the bill of exceptions was made a part of the record, although it was objected and excepted to as such by counsel for plaintiff and appellee.

Fourth. Because the order allowing the appeal and fixing the sum of five hundred dollars ($500), said sum to act as a supersedeas bond and also as

bond for costs on the appeal, was given long after sixty days had elapsed since the date of the denial of the motion for new trial.

Fifth. Because no appeal lies from United States courts in cases at law to the Supreme Court of the United States.

II.

If the appeal be not dismissed, that the judgment of the District Court of the United States for Porto Rico be affirmed, on the ground that although the record may show that this court has jurisdiction, it is manifest that the said appeal was taken for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

FEDERICO DEGETAU,
Counsel for Appellee.

To FOSTER V. BROWN,
Attorney General for Porto Rico
and Counsel for Appellant:

Please take notice that on the 23rd day of January, 1911, the motion for which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Annexed hereto is a copy of our brief in support of said motion.

FEDERICO DEGETAU,
Counsel for Appellee.

Service of the above motion and copy of the brief in support thereof is hereby accepted and acknowledged in San Juan, Porto Rico, 17th of August, 1910.

HENRY L. LYONS,
Acting Attorney General of Porto
Rico and Counsel for Appellant.

BRIEF IN SUPPORT OF MOTION.

Statement of Facts.

On September 4, 1900, the government of Porto Rico dispossessed the appellee of a certain property described in the record. When the appellee claimed his property, the government of Porto Rico, through its treasurer, directed him to go before the courts to discuss the question of title. The District Court of San Juan declared that the lands belonged to plaintiff and ordered that they be left at his free disposal, and that the inscription in the name of the People of Porto Rico be canceled. This decision was submitted to the Supreme Court of Porto Rico, and this court confirmed the judgment of the District Court of San Juan. The People of Porto Rico took no appeal from this decision.

On the 23rd of July, 1908, the present suit was instituted before the District Court of the United States for Porto Rico to recover the rents produced during the period of time in which the People of Porto Rico dispossessed plaintiff of his property. The People of Porto Rico interposed demurrers, which were overruled. A stipulation waiving jury trial was filed, the case tried, and decided for plaintiff on September 7, 1909. A motion for new trial was denied on the 12th of February, 1910, during the October term of the court. On

the 9th of April, 1910, the appellant moved the court to fix the amount of the bond on a writ of error to be considered as a supersedeas, and the amount of said bond was fixed in the sum of five hundred dollars ($500), said bond to be approved as required by law. The term of the court in which the new trial was denied ended on said 9th of April, and the statutory sixty days from the date of said denial—Sundays exclusive—ended on the 20th of said month. The appellant did not give the bond, nor had the bill of exceptions settled and signed by the trial judge; nor made the petition for appeal, nor of writ of error; nor citation was issued, nor assignment of errors was filed.

On the 9th of April an order was entered in the journal of the court to the effect that: "Any and all matters *not finally determined or settled* and rights which should or may be lost by the lapsing of the term are hereby continued until the next term to all intents and purposes as if the numbers and titles of the same were herein set out."

Such was the situation of this case on the 18th of May, when the trial judge left the island on leave for the remainder of his term of office. When the judge was out on the ocean he received a wireless dispatch requesting him that the time for the settling of the bill of exceptions be extended, and he then gave an express order to that effect, although in the absence of extraordinary circumstances or an agreement of the parties the court was already powerless to extend a term that had already ex-

pired. The court was in vacation, and the judge not even certain of whether he was or not within the three miles ocean limit bounding the district of Porto Rico. The motion to extend the time and the order extending it ninety days or sooner coming of the judge to Porto Rico (page 32 of the Transcript of Record) were made without notice being given to the plaintiff.

On the 31st of May, 1910, the plaintiff and appellee filed a motion to strike the wireless order. On the 13th of June, 1910, that motion was denied by the United States district judge, who "had returned to the island in response to a request of the Bureau of Insular Affairs made to the Department of Justice at Washington (page 45 of the Transcript of Record).

In the opinion denying the motion to strike the wireless order, the court very plainly declares that the supersedeas bond was fixed on the last day of the term on the erroneous assumption by the court that a writ of error and citation had been or was to be filed and issued in proper form, "because otherwise the court would not have fixed a supersedeas bond at all" (page 44 of the Transcript of Record).

The assumption of the court was an erroneous one, because as the record shows, no writ of error was filed during the term after the fixing of the bond, nor even after the denial of the motion of appellee to strike out the wireless order.

On the date last mentioned, 13th of June, 1910,

on a motion made by the defendant and appellant, an order entered *nunc pro tunc* as of date of April 9, 1910, was granted by the court to make, sign, and serve a bill of exceptions in this cause; a petition for appeal was granted to the Supreme Court of the United States (not a writ of error); the bond on appeal was fixed in the sum of five hundred dollars ($500), the same to act as supersedeas; and the entire transcript of testimony taken during the trial was presented by the appellant as a bill of exceptions, and it was settled and signed as such. All these orders have been duly objected to and excepted to by the attorneys for plaintiff and appellee.

ARGUMENT.

First.

The first reason assigned for dismissal is that the bill of exceptions in this appeal has been settled and signed after the term had elapsed in which the motion for new trial was denied, without there existing, nor having been alleged, any extraordinary circumstances, nor any agreement between the parties to extend the term.

The act of April 12, 1900 (31 Stat. at L., 85, chap. 191), section 34, creating the District Court of the United States for Porto Rico, provides that

> "Regular terms of said court shall be held at San Juan, commencing on the second Monday in April and October of each year."

The above-entitled cause was tried on September 7, 1909, and the motion for new trial denied on the 12th of February, 1910, during the October, 1909, term of the court, which ended on the 10th of April, 1910.

As already stated, on the 13th of June, 1910, an order was entered *nunc pro tunc* as of date of April 9, 1910, to make, file, and serve a bill of exceptions in this case.

> "The rule seems well established both in the Supreme Court and in the Circuit Court of Appeals that the bill of exceptions must be signed during the term at which the case was tried, and when this is not done the bill will not be considered on error in the absence of extraordinary circumstances, or unless the time is extended by express order, or by the parties' consent. In such case, however, the bill should contain distinct statement showing that consent, or the written agreement of consent should be indorsed on or attached to the bill."
>
> Rose's Code of Federal Procedure, vol. 2, page 1537, section 1932, and cases therein.

> "Where the bill of exceptions has not been seasonably allowed, the judgment of the court below will be affirmed."
>
> Morse *vs.* Anderson, 150 U. S., 156.

> "A bill of exceptions must be signed during the term unless good cause for not so doing is shown."
>
> Brown *vs.* Clark, 4 How., 4.

The bill of exceptions, therefore, can only be considered by this honorable court by the parties' consent, by the existence of extraordinary circumstances, or by an express order of the court. The record shows that there was not any agreement of the parties to extend the term signed during the term nor after it had elapsed. No extraordinary circumstances occurred, neither were alleged, which prevented the appellant from perfecting the appeal within the statutory term. Let us analyze the validity of the express order given by the court.

Second.

The second reason alleged to prove that the appeal was wrongfully granted is that the express order of the court, transmitted by wireless telegraph, extending ninety days the time for settling the bill of exceptions, was given after the term had elapsed.

The October, 1909, term of the court, in which the motion for new trial was denied, ended on the 10th of April, 1910. Before the ending of said term, on the 9th of April, 1910, a general order of the court extended the term for all matters not finally determined or settled. But said order could not apply to a matter already dead on said date by the operation of the statutory provision, unless an express order should be dictated in response to extraordinary circumstances in the case, which might have prevented the settling and signing of the bill in due time.

> "In the absence of provision to the contrary, the court from which an appeal is taken or a writ of error sued out, is without power to extend the statutory time."
>
> Hudson *vs.* Courier Co., 25 Fed., 705;
> 2 "Cyc.," 800.

To obviate such difficulty, the defendant and appellant, on the 18th of May, 1910, long after the expiration of the October term, sent by wireless telegraph a motion to the judge, who was on the high seas, asking an express order extending the term for the settling of the bill of exceptions. Said order was granted for ninety days and transmitted also by wireless telegraph. This wireless order is null and void.

> "An order at the next term after judgment directing that the bill of exceptions be filed as of the date of the trial, is a nullity, and such a bill of exceptions is not a part of the record."
>
> Muller *vs.* Ehlers, 91 U. S., 249.

Said wireless order was given by a judge not certain of being within his jurisdiction. In his decision denying the motion to strike the wireless order, the court plainly confesses that:

> "It was not certain at the time whether the court was within the three miles ocean limit bounding the district of Porto Rico, but we assumed that we were within it" (page 45 of the Transcript of Record),

and

> "Mere assumption of jurisdiction by an inferior court where there is no compliance

with statutory prerequisite will not establish jurisdiction."

Van Loon *vs.* Lyons, 61 New York, 22; 22 "Cyc.," 661.

said order was given by a judge in vacation, and

"A trial judge has no authority, in vacation, to extend the time fixed for filing a bill of exceptions."

Missouri, &c. *vs.* Russell, 60 Fed., 501; 3 "Cyc.," 42.

The wireless motion to extend the time, and the order granting it, were given without notice to the plaintiff and appellee:

"That an order is irregular because made without notice to the adverse party, is sufficient ground for setting it aside. (29 "Cyc.," 1520.)

Third.

The orders of the court given on June 13, 1910, and entered *nunc pro tunc* as of date of April 9, 1910, cannot validate the nullity of such proceedings.

"When the time for taking an appeal has expired it cannot be arrested or taken back by a simple order of court such as entering an order *nunc pro tunc*."

"The attempt made in this case to anticipate the actual time of presenting and filing the appeal by entering an order *nunc pro tunc* does not help the case. When the

time for taking an appeal has expired it cannot be rested or called back by a simple order of court. If it could be, the law which limits the time within which an appeal can be taken would be a dead letter."

Credit Co. Ltd. *vs.* Arkansas Central Ry. Co., 128 U. S., 258.

"An order can be entered *nunc pro tunc* to make record of what was previously done by the court although not then entered; but where the court has wholly omitted to make an order which it might or ought to have made, it cannot afterwards be entered *nunc pro tunc*."

Klein *vs.* Southern, 140 Fed., 213.
Klein *vs.* Southern, 29 "Cyc.," 1516.

"An order will not be entered *nunc pro tunc*, even in an otherwise proper case, if the delay in entering it was due to some fault or omission by the party entitled to enter the order."

Tynan *vs.* Weinhard, 153 Ill., 598;
State *vs.* Langley, 13 Wash., 636;
State *vs.* Kinkade, 25 Ohio Cir. Ct., 657.

The entire transcript of testimony was offered as the bill of exceptions and made a part of the record as such, although it contains much immaterial matter, as it contains all the evidence, and was objected and excepted to for that reason by counsel for appellee.

"The bill of exceptions should not contain all the evidence."

Eakman *vs.* Johns, 9 Wall., 197.

> "Even when the trial is by the court a bill of exceptions cannot be used to bring up the whole testimony for review any more than when the trial is by jury."
>
> Springfield *vs.* Sea., 21 Wall., 158.

It is to be observed that in this case trial by jury was waived by agreement between the parties, and

> "In Bond *vs.* Dustin, 112 U. S., 604, it was held that it had been settled by repeated decisions that in any action at law in which the parties waived a trial by jury and submitted the facts to the determination of the circuit court upon the evidence, its judgment was valid; but that this court had not authority to revise its opinion upon the admission or rejection of testimony, or upon any other question of law growing out of the evidence; and therefore when no other error appeared on the record, must affirm the judgment * * *."
>
> Taylor on Jurisdiction of the Supreme Court, page 240.

Fourth.

The orders given by the court on June 13, 1910, entered *nunc pro tunc* as of date of April 9, to the effect that the bond served as a supersedeas cannot annul the provisions of the Revised Statutes of the United States. Section 1007, U. S. Rev. Stat., is as follows:

> "* * * Where a writ of error may be a supersedeas the defendant may obtain such supersedeas by serving the writ of er-

> ror, by lodging a copy thereof for the adverse party in the clerk's office where the record remains within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation * * *."

And this honorable court has declared that:

> "The service of a writ of error, or the taking of appeal, within the sixty days, Sundays exclusive, after the rendering of the judgment or decree complained of, is an indispensable prerequisite to a supersedeas."
>
> Sage *vs.* Central R. Co., 93 U. S., 412.

And that

> "Under U. S. Revised Statutes, section 1007, as amended by 18 Stat. at L., 318, a supersedeas cannot be allowed where an appeal was not taken or a writ of error sued out and served within sixty days, Sundays exclusive, after judgment."
>
> Kitchen *vs.* Randolph, 93 U. S., 86.

The motion for new trial was denied on the 12th of February, 1910, so that the sixty statutory days ended on the 20th of April, but neither petition for appeal nor writ of error, nor assignment of errors was made until the 13th of June. In said date was granted the appeal and directed that the supersedeas bond be filed, though this bond was not in fact filed until the 5th of July, 1910 (page 219 of the Transcript of Record.)

The laches shown by the computation of these dates is in itself a ground for dismissal according to the decision of this honorable court in Cincinnati Safe, &c., *vs.* Grand Rapids, &c.:

> "Where a writ of error was allowed to the Supreme Court of the United States June 19, 1891, with stay of execution upon filing supersedeas bond, and such bond was filed and approved June 20, 1891, and the petition for the allowance of the writ of error and of assignment of errors were filed in the clerk's office of the circuit court July 3, 1891, and the writ of error bear test of that day, the case was dismissed upon the ground that the writ of error was not sued out before July 1, 1891" (146, U. S., 54).

Fifth.

The fifth ground to dismiss this appeal is that no appeal lies from the final judgment in a case at law tried before a Federal court, but that it should be reviewed, if at all, by a writ of error.

> "A writ of error and not an appeal in an action at law is allowed under the Tucker act of March 3, 1887, regulating procedure in suits against the government in the circuit or district court."
>
> Chase *vs.* U. S., 155 U. S., 489.

> "Where a case is brought by an appeal from a judgment on the common-law side of the circuit court, instead of by a writ of error, it must be dismissed."
>
> Bevins *vs.* Ramsey, 11 How., 185.

"Errors alleged to have been committed in an action at law can be reviewed in the Supreme Court of the United States only by writ of error."

Behn M. & Co. *vs.* Campbell, 205 U. S., 403.

"Cases at law are reviewable only by writ of error."

Bondurant *vs.* Watson, 103 U. S., 278.

The judge of the district court fixed the amount of the bond on April 9, on the assumption that a writ of error and not an appeal was to be prepared during the term (pages 44 and 46 of the Transcript of Record).

Notwithstanding this fact the judge in his order of June 13, 1910, granted an appeal instead of a writ of error. It seems that the sole reason for such change is that according to Taylor on "Jurisdiction and Procedure of the United States Supreme Court," page 180, "the Supreme Court can only review a judgment of a territorial court, in a case not tried by jury, by an appeal."

This doctrine is not applicable to the present case because it is not an appeal from a territorial court, but from the District Court of the United States for Porto Rico.

Respectfully submitted.

FEDERICO DEGETAU,
Counsel for Appellee.

[Endorsed:] Jan. 23. File No. 22,289. Supreme Court U. S. October term, 1910. Term No. 668. The People of Porto Rico, appellant, vs. Pierre Emanuel, Baron de Laurens d'Oiselay. Motion to dismiss or affirm, notice and proof of service. Filed November 30, 1910.

Supreme Court, U. S.
FILED.
OCT 30 1913
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted]. 1913

No. [redacted].

THE PEOPLE OF PORTO RICO, APPELLANT,

vs.

PIERRE EMANUEL, BARON D'OISELAY.

MEMORANDUM IN REPLY TO THE SUPPLEMENTAL MEMORANDUM OF APPELLANT ON MOTION TO DISMISS OR AFFIRM.

FEDERICO DEGETAU,
Counsel for Appellee.

(22,289)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 15.

THE PEOPLE OF PORTO RICO, APPELLANT,

vs.

PIERRE EMANUEL, BARON D'OISELAY, APPELLEE.

MEMORANDUM IN REPLY TO THE SUPPLEMENTAL MEMORANDUM OF APPELLANT ON MOTION TO DISMISS OR AFFIRM.

Counsel for appellee has received on the 19th of October, 1913, a letter from the Department of Justice of the Island that reads as follows:

> "Department of Justice of Porto Rico—Office of the Attorney General, San Juan—Hon. Federico Degetau, Aibonito, P. R. Dear Sir:—I have just received the following cablegram from Mr. Frankfurter, the Solicitor of the Bureau of Insular Affairs: 'Daniel Walton: Advise Federico Degetau that Emanuel case will probably be reached for argument by the end of the month. Government's position practically contained in prior memorandum filed

by me. Desire to know his wishes—Felix Frankfurter.' If you will advise me what your wishes are in regard to this case, I should be glad to communicate them to Mr. Frankfurter—Respectfully Daniel Day Walton, Acting Attorney General."

In answer to this letter counsel for appellee, not being able to go to Washington to argue personally the case, expressed his desire to receive the brief of the appellant in support of appeal within the necessary time to answer it. With this object in view counsel for appellee agreed with the Attorney General in joining in a motion to this honorable court to ask for a postponement to give time to counsel for appellant to prepare and serve his brief.

As, however, counsel for appellant refers to the position of the government of the Island as contained in his memorandum, with the leave of the court, it appears that the needs of justice require at least a brief statement in reply to said memorandum filed December 2, 1911.

The three questions that are considered by said memorandum as raised by the record appear to us as being only one in substance, the other two being mere sequences of the first. This question is formulated in the following terms:

> "Can the people of Porto Rico be sued in the absence of legislative permission, which is lacking in this case?" (page 2 of the Supplemental Memorandum of Appellant on Motion to Dismiss or Affirm).

The negative appears supported by the decision of this honorable court in the case of People of Porto Rico *vs.* Rosaly, No. 408 of the last term.

To allege that the people of Porto Rico cannot be sued without its consent, as the question raised by this case, is a position that cannot be taken successfully by the government of Porto Rico.

When the appellee claimed the lands of which he had been dispossessed and was directed by the government to establish the title to his property in the courts, he addressed

his suit not against the people of Porto Rico, but against the "Treasurer of Porto Rico."

Mr. Brown, the Attorney General, called the attention of the district court to this very fact. (See page 54 of the printed copy of the Transcript of Record.) The title of the suit was changed, it appears, on the authority of the Supreme Court of the Island.

The Supreme Court of Porto Rico being vested with the judicial powers of the body politic, the People of Porto Rico, and having the Executive Department accepted as final its judgment, your appellee was obliged at the time of addressing his claim for the recovery of the rents of said property to entitle his suit accordingly. The government of the Island has therefore its action barred to allege now that the people of Porto Rico cannot be sued by a party who sued not the people of Porto Rico, but the Treasurer of the Island, and when it was under the authority of the Supreme Court of Porto Rico accepted by the government that the change of the title took place.

It is to be observed also that appellant, before answering the complaint, interposed thirteen grounds for demurrer that were fully answered in due time, and not once mentioned the privilege of the people of Porto Rico of exception from suit. This allegation was formulated very late in the discussion of the case, as the judge of the District Court for Porto Rico observed (page 19 of the Transcript of Record).

To reason out in proper form this question of law and the other two that as a sequence of this are pointed out in the memorandum require more time than the one now at the disposal of appellee to reach in time for the hearing of the case.

For such reasons counsel for appellee is ready to join counsel for appellant in a motion to give to said counsel for appellant time to file his brief and to serve a copy of the same to be studied and replied.

In any case the court is prayed to admit this memorandum as an answer to the main allegation contained in the Supplemental Memorandum of Appellant.

Respectfully submitted,

FEDERICO DEGETAU,
Counsel for Appellee.

[25898]

No. [redacted]

Office Supreme Court, U. S.
FILED.
DEC 1 1911
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1910~~ 1914

[redacted]

THE PEOPLE OF PORTO RICO,
Appellant,

vs.

PIERRE EMMANUEL,

BARON DE LAURENS D'OISELAY,
Appellee.

BRIEF OF APPELLANT ON MOTION OF APPELLEE TO DISMISS APPEAL.

FOSTER V. BROWN,
Attorney-General of Porto Rico,
PAUL CHARLTON, *Attorney for Appellant.*
Of Counsel.

Press of the Sudwarth Company, Washington.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

No. 668.

THE PEOPLE OF PORTO RICO,
Appellant,

vs.

PIERRE EMMANUEL,

BARON DE LAURENS D'OISELAY,
Appellee.

BRIEF OF APPELLANT ON MOTION OF APPELLEE TO DISMISS APPEAL.

STATEMENT OF FACTS.

Appellee has filed a motion to dismiss the appeal in the case of The People of Porto Rico, Appellant, *vs.* Pierre Emmanuel, Baron de Laurens D'Oiselay, Appellee, heretofore taken by Appellant from a judgment of Seven Thousand Four Hundred and Fifty Dollars ($7,450), rendered by the District

Court of the United States for Porto Rico in favor of Appellee, and against Appellant, upon the following grounds:

I.

That the bill of exceptions was settled and signed by the trial Judge after the term had expired and without any extension of time having been granted, and without any agreement of parties, or a showing of extraordinary circumstances. That the pretended order of Court, extending the time for the settling of the bill of exceptions ninety days, was made by the Judge during the vacation of the Court, by wireless telegraph while on the high-seas, and uncertain as to whether or not he was within the three-mile limit of the Island of Porto Rico, without notice to Appellee, and after the term during which the motion for a new trial had been denied had expired.

II.

Because the order of the Judge allowing Appellant an order *nunc pro tunc* as of April 9, 1910, extending Appellant's time in which to file the bill of exceptions, is a nullity.

III.

That no appeal lies from the United States courts in actions at law to the Supreme Court of the United States, and the appeal should be dismissed because the entire transcript of the evidence

introduced on the trial was made a part of the bill of exceptions.

This was a suit for damages in the District Court of the United States for Porto Rico for the wrongful detention of certain lands owned by Appellee in the Island of Porto Rico. By stipulation of counsel, a trial was had before the Court without the intervention of a jury, on June 10, 1909, the same being the April, 1909, Term of said Court, and on the seventh day of September, 1909, and during the same Term, the Court entered judgment in favor of Appellee for the sum of Seven Thousand Four Hundred and Fifty Dollars ($7,450.), but stayed execution until the further order of the Court, and until the Insular Legislature should have an opportunity to act in the premises.

On the 11th day of September, and during the same April, 1909, Term of said Court, a motion for a new trial was filed, which on February 12, 1910, and during the October, 1909, Term of said Court, was overruled.

No further action was taken in the case until the 9th day of April, 1910, which was the last legal working day of the October, 1909, Term of the Court, on which day counsel for the respective parties appeared, and, upon motion of counsel for Appellant, the Court fixed a bond on appeal in the sum of Five Hundred Dollars ($500.00), the same to act as a supersedeas and a bond for costs, and execution was stayed pending the decision of the cause on the merits by the Supreme Court of the United States.

The entry of this proceeding was the last entry of

the Term save one, which was a general entry made to protect and preserve every right possessed by every litigant that might lapse because of the ending of the Term, and is as follows:

> "*In re Continuation of Cases.* And now on this Ninth day of April, this being the last day of the October Term of the Court in this District, it is—
>
> "*Ordered* that any and all cases not finally determined or settled, and rights which should or may be lost by the lapsing of the Term, are hereby continued until next Term, to all intents and purposes as if the numbers and titles of the same were herein set out. Whereupon Court adjourned *sine die.*"

On the afternoon of the 18th day of May, the Judge of the District Court of the United States for Porto Rico, before whom the case had been tried and judgment entered, left the Island of Porto Rico for the United States. The same afternoon, and shortly after leaving the harbor of San Juan, the Judge received a wireless message requesting that the time for filing and settling the bill of exceptions in the cause be extended, and the Judge, assuming that he was within the three-mile limit of the Island of Porto Rico and within his jurisdiction, granted ninety days additional time, or the sooner coming of the Judge to Porto Rico, in which to prepare, file and settle the bill of exceptions in said cause.

On May 21, 1910, counsel for Appellee filed a motion to strike from the files the order entered on

May 18th granting an extension of ninety days, or the sooner coming of the Judge to Porto Rico, for settling said bill of exceptions.

On May 23, 1910, counsel for Appellant presented and tendered to the Clerk of the District Court of the United States for Porto Rico a proposed bill of exceptions in the premises, and cited counsel to appear against an order that the same be settled on the 9th day of June.

Upon the return of the Judge of the District Court of the United States for Porto Rico to the Island of Porto Rico, the matter of Appellee's motion to strike said order of May 18th, granting defendant additional time in which to prepare, file and settle a bill of exceptions, was argued and considered on the 11th day of June, and on the 13th day of June the Court denied said motion to strike, and allowed Appellant to file an order *nunc pro tunc* as of a date to give it legal effect within the proper time during the October, 1909, Term, permitting the Writ of Error and Citation to be filed and issued and granting the same. Whereupon said bill of exceptions was duly presented, settled and signed by the Court, and said appeal allowed.

ARGUMENT.

I.

Appellant respectfully urges that the bill of exceptions was properly allowed by the Judge during the Term to which the time had been duly and regularly extended, on the Court's own motion.

The record discloses that on the 9th day of April, 1910, the same being the last legal working day of the October, 1909, Term, the Term during which the motion for a new trial was denied, counsel for Appellants moved the Court to fix an appeal bond in the case, the same to act as a supersedeas, and a bond for costs on appeal. The Court granted such motion and fixed the bond in the sum of Five Hundred Dollars ($500.00), and execution was stayed pending the decision of the cause on the merits by the Supreme Court of the United States, and thereafter directed a general entry to be made by the Clerk as follows:

> "*In re Continuation of Cases.* And now on this 9th day of April, this being the last day of the October, 1909, Term of the Court in this District, it is—
>
> "*Ordered* that any and all cases not finally determined or settled, and rights which should or may be lost by the lapsing of the Term, are hereby continued until next Term, to all intents and purposes as if the numbers and titles of the same were herein set out. Whereupon Court adjourned *sine die*."

This order is a sufficient continuance of the case, and a retention of jurisdiction by the Court to carry over until the next Term of the Court the settlement, filing and approving of the bill of exceptions.

The action of the Court in fixing the bond on appeal, at the request of Appellant, and staying execution determined, conclusively, that this cause

was one not finally determined or settled, and one in which rights might be lost by the lapsing of the Term—and we respectfully submit that the same comes within the purview of the order made by the Court, in the presence of counsel for Appellee, to all intents and purposes as if the number and title of the same had been specifically set forth.

There is no law or rule of Court which requires that a case be specifically continued by name to the next Term for the purpose of filing the bill of exceptions. The rule provides:

> "The bill of exceptions may be submitted to the Court, or the Judge thereof, at any time during the Term at which such was tried, or within such time as may be extended by the Court."

The whole proceedings had on the 9th day of April, and the statements of counsel made in open court, clearly showed an intention on the part of the Island Government to perfect an appeal to the Supreme Court of the United States; and, in view of that manifest intention, and the action of the Court in continuing all cases in which rights might be lost by the lapsing of the Term, clearly showed the intention of the Court to continue the settlement and approval of the bill of exceptions in the case at bar to the next Term of Court. Counsel for Appellee can not plead ignorance of this order, because the record shows that they were present in Court at this time contesting the application of counsel for Appellant for the fixing of the bond on appeal—and we submit that, in view of all the pro-

ceedings had that day with reference to the case at bar, the general order of continuance should be held to carry the settling and signing of the bill of exceptions to the next Term of Court.

The objection of Appellee that the order transmitted by wireless telegraph extending the time in which to prepare, file and settle the bill of exceptions ninety days is a nullity, because it was granted after the Term at which the motion for a new trial had been denied, without any order of court having been made extending the time to settle said bill of exceptions over to the next Term, is not supported by law or by the record.

The October, 1909, Term of said Court, during which term said motion for a new trial was denied, adjourned on the 10th day of April, 1910. Before the adjournment of said Term counsel for both parties appeared, and, after considerable argument in that behalf, and for the sole reason that The People of Porto Rico was the defendant, and counsel for The People promised that the judgment would be immediately paid in case the cause was affirmed by the Supreme Court, a supersedeas bond was fixed at the low sum of Five Hundred Dollars ($500.), and execution stayed. That it was understood at that time by the Court and counsel that a writ of error and citation had been filed, or was to be filed, and issued in the proper form, otherwise the work then being done would have been meaningless.

Thereafter, the Court of its own motion continued all cases not finally disposed of and in which

rights should or may be lost by the lapsing of the Term. This, as we have shown, was a continuance over to the next Term of the matter of the settlement and approval of the bill of exceptions in the cause, and was a retention by the Court of jurisdiction in the case.

The Act of April 12, 1900, (31 Stat. at Large, 85, Ch. 191), Section 34, creating a District Court of the United States for Porto Rico, provides for two regular terms of court, as follows:

> "Regular terms of said court shall be held at San Juan commencing on the second Monday of April and October of each year."

The April, 1910, Term was duly convened, and on the adjournment of the Court on the 18th day of May, the day on which the Judge left Porto Rico for the United States, Court was not adjourned *sine die;* but, on the contrary, the record shows the following order after the conclusion of proceedings before the Court:

> "Whereupon Court adjourns until its own further order within the Term."

This April, 1910, Term was still continued, never was adjourned *sine die*, and was subject to be reopened at any and all times during that Term—and we submit that any order made by the Judge after this adjournment was within the April, 1910, Term, and a valid and legal order.

The order granting Appellant ninety days in which to file and settle the bill of exceptions was

within the Term to which the time had been extended for that purpose by the general order of May 18. The wireless order shows upon its face that the Court was still within its jurisdiction, although upon the sea, and this recital is conclusive when uncontradicted by evidence to the contrary. No attempt was made by Appellee to show that the Judge was not within his jurisdiction when said order was signed, and it must then be presumed that he was within his District; and, in view of the fact that all matters and rights, which should or might be lost by the lapsing of the October, 1909, Term, had been continued by order to the April, 1910, Term, it was properly within his power to grant Appellant's application of ninety days' extension in order to prepare, file and settle said bill of exceptions.

II.

Admitting, for the purpose of argument, that the General Order of April 9, 1910, providing that all cases not yet determined or settled, and all rights which should or may be lost by the lapsing of the Term, is not such an order as would continue the filing, settling and approving of the bill of exceptions over until the April, 1910, Term of said Court, and that the order by wireless telegraphy extending Appellant's time ninety days in which to file and settle said bill of exceptions, are void, we still respectfully contend and urge that the motion filed on June 13, 1910, and the *nunc pro tunc* order entered on that day as of the 9th of April, 1910,

extending Appellant's time to file and settle said bill of exceptions until June 13, 1910, was a sufficient order to validate the filing, settlement and approval of said bill of exceptions and the allowance of the appeal. Said order is as follows:

> "It is hereby ordered that an order *nunc pro tunc* as of April 9, 1910, be, and it is hereby, considered as entered upon the minutes of this Court extending defendant's and appellant's time in which to make, file and serve a bill of exceptions in the above entitled cause until June 13, 1910."

Section 35 of the Act of April 12, 1900, (31 Stat. 85) provides for the allowance of appeals to the Supreme Court of the United States, and is as follows:

> "That writs of error and appeal from the final decisions of the Supreme Court of Porto Rico and the District Court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States * * *."

Appeals from the supreme courts of the Territories of the United States are taken in the same manner as appeals from the circuit courts of the United States.

The language of the statute allowing appeals

from the circuit courts to the Supreme Court is that:

> "No judgment, decree or order of a circuit or district court in any civil action at law or in equity shall be reviewed in the Supreme Court on writ of error or appeal unless the writ of error is brought or the appeal is taken within two years after the entry of such judgment, decree or order." Sec. 1008, R. S.

This right of appeal is a right authorized by statute and cannot be taken away or abridged by rule of court, and the right may be exercised at any time within the period of two years from the rendition of judgment.

Bills of exception may be filed at any time during the statutory period of two years by the entering of *nunc pro tunc* orders, as of the time within the Term at which the judgment was rendered. This doctrine has been approved in the following cases:

> Koewing *vs.* Wilder, 126 Fed. 474.
> Talbot *vs.* Press Co., 80 Fed. 567.
> Chateaugay Ore & Iron Co., 128 U. S. 544.

The Court in the case of Talbot *vs.* Press Publishing Company, 80 Fed., 567, in commenting upon the decision of the Supreme Court of the United States in Chateaugay Ore & Iron Company, 128 U. S., 544, said:

> "The decision in Chateaugay Ore & Iron Co. 128 U. S., 544, has recognized a more liberal rule as applicable in this district, where as the

> supreme Court says, by Mr. Justice Blatchford, 'the rules of the Circuit Court clearly contemplate proceedings to perfect a bill of exceptions within the time limited by those rules, without reference to the expiration of a term.' Since those rules expressly contemplate an enlargement of the time by the judge in a proper case, there is no reason why enlargement should not be made in this case, although the trial and judgment term has expired."

Counsel for Appellants admit that if the appeal had not been taken within two years, as required by Section 1008, R. S., a *nunc pro tunc* order entered after the lapsing of such statutory time would be of no avail. In the case at bar the Appellant moved for a *nunc pro tunc* order during the time within which an appeal could be taken to the Supreme Court, and at the next Term following the rendition of judgment, and during the Term to which the cause had been continued by the order of April 9, 1910.

III.

The contention of Appellee that no appeal lies from the final judgment rendered by the District Court of the United States in this action, but, on the contrary, if reviewed at all in the Supreme Court it must be by and through a writ of error, is untenable.

The power of the Supreme Court to review is

derived from Section 35 of the Act of April 12, 1900, (31 Stat. 85), which provides:

> "That writs of error and appeals from final decisions * * * of the District Court of the United States for Porto Rico shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations * * * as from the supreme courts of the Territories of the United States."

The jurisdiction of the Supreme Court over causes coming from the Territories generally was stated in Idaho and Oregon Land Company *vs.* Bradley, 132 U. S., 513, as follows:

> "Congress has prescribed that the appellate jurisdiction of this Court over 'judgments and decrees' of the Territorial courts, 'in cases of trial by jury, shall be exercised by writ of error, and in all other cases by appeal;' and 'on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejectment of evidence when excepted to, shall be made and certified by the court below,' and transmitted to this court with the transcript of record."
>
> Act of April 7, 1874, c. 80, Sec. 2, 18 Stat. 27, 28.

The Supreme Court of the United States in considering Section 2 of the Act of April 7, 1874, 18 Stat. 27, 28, has repeatedly held that that court can

only review a judgment of a Territorial Court, in a case not tried by a jury, by an appeal.

Stringfellow *vs.* Cain, 99 U. S., 610.
Canon *vs.* Pratt, 99 U. S., 619.
Gray *vs.* Howe, 108 U. S., 12.
Murphy *vs.* Ramsey, 114 U. S., 35.
United States *vs.* Hailey, 118 U. S., 235.
Thompson *vs.* Ferry, 180 U. S., 484.
Armijo *vs.* Armijo, 181 U. S., 558.

We, respectfully, urge that, under the rulings of the Supreme Court as announced in the foregoing decisions, an appeal is the proper method of reviewing a case at law tried before the court without the intervention of a jury.

The fact that the entire transcript of testimony was offered as the bill of exceptions and made a part of the record, instead of a statement of facts in the nature of a special verdict, is not a sufficient ground for the dismissal of the appeal in this case.

The Supreme Court, in the case of Garzot *vs.* De Rubio, 209 U. S., p. 284, a case appealed from the District Court of the United States for Porto Rico, in which the transcript contained all the proceedings and all the testimony offered at the trial, said:

> "It follows that the greater part of the transcript is superfluous, and we therefore disregard it and confine our attention to such legal questions as necessarily arise on the face of the record—viz: to rulings concerning the rejection or admission of testimony duly excepted to, and to the sufficiency of the findings to sus-

tain the legal conclusion or decree based on them."

In virtue of the foregoing doctrine we submit that the Court has the right, and it is its duty, to consider all the legal questions raised in the record, the rulings concerning the admission or rejection of testimony duly excepted to, and the sufficiency of the findings to sustain the legal conclusions or decree based on them.

On making the order allowing the bill of exceptions the Judge filed a written opinion in which he set out the facts in regard to the various orders, and gave his reasons for signing the bill of exceptions, which is set forth in the transcript of the record at page

In conclusion, we submit that in view of the facts and the law, and the more liberal rule now in vogue governing appeals to the Supreme Court of the United States, the motion to dismiss the appeal and affirm the judgment is without merit and should be dismissed.

Respectfully submitted,

FOSTER V. BROWN,
Attorney-General of Porto Rico,
Attorney for Appellant.

PAUL CHARLTON,
Of Counsel.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

No 4. ~~115, 15~~

In the Supreme Court of the United States.

OCTOBER TERM, ~~1911~~. 1914

THE PEOPLE OF PORTO RICO, APPELLANT,

v.

PIERRE EMANUEL, BARON DE LAURENS D'OISELAY, APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR PORTO RICO.

SUPPLEMENTAL MEMORANDUM OF APPELLANT ON MOTION TO DISMISS OR AFFIRM.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE PEOPLE OF PORTO RICO, APPELLANT,
v.
PIERRE EMANUEL, BARON DE LAURENS D'OISELAY, APPELLEE.
No. 371.

SUPPLEMENTAL MEMORANDUM OF APPELLANT ON MOTION TO DISMISS OR AFFIRM.

The motion to dismiss is urged on a number of technical grounds affecting the settlement of the bill of exceptions and alleged defects in the timeliness and method of appeal. These objections have been met in a brief heretofore filed on behalf of The People of Porto Rico.

The motion to dismiss is paired with an alternative formal motion to affirm. The appellee confidently rests this on a formal prayer, unsupported by argument, so that this Court is left wholly to uncertainty or driven to an uninviting record as to the very nature of the case.

Doubtless the motion to affirm was intended to be treated as merely formal, but it is perhaps due

to the Court briefly to indicate the character of the issues. It is as to this point that leave is respectfully asked for the consideration of the present memorandum.

The case briefly is this: In 1900 the treasurer of Porto Rico caused plaintiff's (appellee's) tenants to register in the name of The People of Porto Rico land theretofore held under leasehold and to cease payments of rental to the plaintiff.

In 1905, as a result of suit brought by the plaintiff against Porto Rico (in which the attorney general of Porto Rico appeared for the island), the plaintiff was finally declared the owner of the disputed land.

During the interim the plaintiff lost his rentals. But, on the other hand, Porto Rico never received any rent or profit whatever by reason of the attempted dispossession. The plaintiff thereupon brought the present action against The People of Porto Rico for the treasurer's tortious act in inducing the tenants to withhold the payment of rent.

The Federal District Court for Porto Rico, sitting without a jury, after not a little doubt as to the legal questions raised, directed a verdict against Porto Rico.

Clearly there are at least three questions of substance raised by the record.

First. *Can The People of Porto Rico be sued in the absence of legislative permission, which is lacking in this case?*

That The People of Porto Rico will be held to be exempt from such a suit seems to be foreshadowed by *Kawananakoa* v. *Polybank* (205 U. S., 349). The slender thread of distinction on which a contrary ruling has been made as to Porto Rico rests upon the provision in the organic act of Porto Rico, creating a body politic "with power to sue and be sued." (Sec. 7, Act of April 12, 1900, 31 Stat., 79.) This question is raised by *The People of Porto Rico* v. *Rosaly*, No. 408, of the present term, as to which a motion to advance is now before this Court. Whatever disposition may be made of that motion, it is submitted that the present case may properly be considered at the same time as the *Rosaly* case, *supra*.

Second. *Is the government of Porto Rico, under the circumstances of this case, liable for the tortious act of an agent from which it derived no benefit whatever?*

A contrary answer from that given by the District Court below would seem clearly to follow from *Langford* v. *United States* (101 U. S., 341) and *Belknap* v. *Schild* (161 U. S., 10, 17).

Third. *Does the mere appearance by its Attorney General in a suit in the Porto Rican courts trying title to land afford a waiver of exemption from suit against Porto Rico in the Federal Court for loss of rental due to the tortious action of an officer of the island?*

That the appearance of the attorney general in one suit could not operate as a blanket waiver of exemption from suit in a totally different action

appears to be settled. (See *Kawananakoa* v. *Polybank*, 205 U. S., 349; *Carr* v. *United States*, 98 U. S., 433; *Stanley* v. *Schwalby*, 162 U. S., 255, 269, 270.)

We submit that these are serious questions. The court below, itself, had "the gravest doubts about the right of the plaintiff to recover at all in this or any other court." (R., 18.)

It is respectfully submitted that the motion to dismiss or affirm should be denied.

FELIX FRANKFURTER,
Law Officer, Bureau of Insular Affairs.

DECEMBER, 1911.

○

Supreme Court, U. S.
FILED
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Clerk.

No. 4

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE PEOPLE OF PORTO RICO, APPELLANT,

vs.

PEDRO ESTADELLA, BARON DE LAURENS, D'OMBRAT.

BRIEF FOR APPELLANT.

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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE PEOPLE OF PORTO RICO, APPELLANT,
v.
PIERRE EMANUEL, BARON DE LAURENS d'Oiselay. } No. 15.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF FOR APPELLANT.

STATEMENT.

The case, briefly, is this: In 1900, J. H. Hollander, the then Treasurer of Porto Rico, caused tenants of the appellee (hereinafter called the plaintiff) to register in the name of The People of Porto Rico land theretofore held under leasehold from the plaintiff and to cease payments of rent to him.

On June 22, 1904, by the decision of the Supreme Court of Porto Rico, as a result of a suit brought in the insular courts, by the plaintiff, (in which the Attorney General of Porto Rico appeared for the Island), the plaintiff was finally declared the owner of the disputed land. (Fols. 3, 22; and 7 P. R. Rep., 216.)

Between 1900 and the latter part of 1905 (when the plaintiff was again put in possession of the land) the plaintiff lost his rentals. But, on the other hand, Porto Rico never received any rent or profit whatever by reason of the attempted dispossession. (Fol. 24.)

The plaintiff, thereafter, in June, 1908, brought the present action against Porto Rico in the Federal District Court, in substance, for Treasurer Hollander's tortious act in inducing the tenants to withhold the payment of rent from September, 1900, to December, 1905. (R., 1–3.)

The Federal District Court for Porto Rico, sitting without a jury, after considerable doubt as to the legal questions raised, directed a verdict against Porto Rico, practically as a means of securing a review of the questions by this court. (Fols. 2, 30, 46.) Judge Rodey's opinion is now reported in 5 Fed. Rep. P. R., 89.

THE ISSUE.

There are preliminary technical questions raised by a motion to dismiss. The simple issue on the merits, however, is whether the facts of this case establish Porto Rico's consent to be sued and thereby take it out of the rule of sovereign exemption from suit, recently announced by this court. (*Porto Rico* v. *Rosaly*, 227 U. S., 270.)

ARGUMENT.

We shall argue:

1. The procedural objections raised by the motion to dismiss are without merit.

2. This was a suit against The People of Porto Rico without its consent, and, therefore, beyond the jurisdiction of the lower court.

3. If, however, the Island, under any theory of this case, was liable, under section 1804 of the Civil Code of Porto Rico, such liability was barred at the time this suit was commenced.

POINT ONE.

The procedural objections raised by the motion to dismiss are without merit.

The motion to dismiss is urged on technical grounds affecting the settlement of the bill of exceptions and the form of appeal. These objections will here be briefly disposed of, having been fully considered in a brief heretofore filed in opposition to the motion.

(a) *The bill of exceptions was properly settled and the appeal duly perfected.*

Objection is made that the bill of exceptions was settled after term time. This is true. But the short answer is that the District Court retained control over the case by a specific order extending the term as to pending cases, of which this was one.

The Federal District Court for Porto Rico has two regular terms, commencing on the second Monday of April and October of each year, respectively. (Sec. 34, Act of April 12, 1900; 31 Stat., 77, 85.) This case was begun in the October term, 1909. On April 9, 1910, the last day of the term, the plaintiff moved to fix the appeal bond and bond for costs to act as a supersedeas on the proposed appeal. (Fol.

31.) This supersedeas bond was fixed by the court, and, thereupon, the following order was made:

> And now on this 9th day of April, this being the last day of the October, 1909, term of court in this district, it is:
>
> *Ordered*, That any and all matters not finally determined or settled and rights which should or may be lost by the lapsing of the term are hereby continued until the next term to all intents and purposes as if the numbers and titles of the same were herein set out. (R., 24.)

The plain purpose of this order was, as expressed by Judge Rodey, who entered it, "to protect and preserve every right possessed by any litigant that might lapse because of the ending of the term." (fol. 44.)

Subsequently, the court, by wireless order, presumably made within the 3-mile jurisdiction of the Federal court (fol. 32 and 45), specifically extended for 90 days the time for the settlement of the bill of exceptions. Thereafter, by a *nunc pro tunc* order on a contested motion, Judge Rodey allowed the settlement of the bill of exceptions, and it was settled on June 13, 1910. (Memorandum of Judge Rodey, R., 31.) Of course the appeal was clearly taken within the statutory period of appealability, which was two years (sec. 35, act of Apr. 12, 1900;[1] 31 Stat., 77, 85, in connection with sec. 1608,

[1] This section of the Foraker Act, in force at the time the present appeal was taken, has since been superseded by sec. 244 of the Judicial Code, Mar. 3, 1911, 36 Stat., 1087, 1157.

R. S., U. S.), and the court by its timely order retained control of the case beyond the term. The bill of exceptions, therefore, is properly here. (See *Hume* v. *Bowie*, 148 U. S., 245, 253; *The Chateaugay Ore and Iron Company, petitioner*, 128 U. S., 544, 556; *Koewing* v. *Wilder*, 126 Fed., 472; *Talbot* v. *Press Publishing Company*, 80 Fed., 567, C. C. A.) Of course, on such a matter of procedure, where the *nisi* judge had undoubted power to retain control by a proper order, his own intent to accomplish this end will not lightly be deemed by this court to have been ineffectual.

(*b*) *Appeal is the proper mode of review.*

Cases from Porto Rico at the time the present appeal was perfected were brought here according to the provisions of section 35 of the act of April 12, 1900 (31 Stat., 77, 85), in connection with section 2 of the act of April 7, 1874 (18 Stat., 27), governing appeals from the Territorial courts. Being an action tried without a jury, appeal and not writ of error is the proper mode of review. (*Garzot* v. *de Rubio*, 209 U. S., 283; *Murphy* v. *Ramsey*, 114 U. S., 15, 35; *Rosaly* v. *Graham*, 227 U. S., 584.)

POINT TWO.

This was a suit against The People of Porto Rico without its consent, and, therefore, beyond the jurisdiction of the lower court.

It is now settled that Porto Rico enjoys the exemption of a political sovereignty not to be sued without consent. (*Porto Rico* v. *Rosaly*, 227 U. S., 270.) For this consent the court below relied in the present

case on paragraph 5 of section 1804 in connection with section 1803 of the Civil Code of Porto Rico, which read as follows:

> SECTION 1803. A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done.
>
> SECTION 1804. The obligation imposed by the preceding section is demandable not only for personal acts and omissions, but also for those of the persons for whom they should be responsible.
>
> * * * * *
>
> *The State is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding section shall be applicable.*[2]

---

[2] This provision was taken from section 1903 of the Spanish Civil Code:

"SECTION 1903.

* * * * *

[Paragraph 5.] "El Estado es responsable en este concepto cuando obra por mediacion de un agente especial, pero no cuando el daño hubiese sido causado por el funcionario a quien propiamente corresponda la gestion practicada, en cuyo caso sera aplicable lo dispuesto en el articulo anterior."

A more satisfactory translation into English than that of the Porto Rican Code has been made by Mr. Frank L. Joannini, as follows:

"The State is liable in this respect when it acts through the medium of a special agent, but not when the damage was caused by an official to whom the action taken properly pertained, in which case the provisions of the preceding article apply."

The meaning that emanates from this provision is that the State assumes pecuniary liability for damage improperly caused by an official charged with a specific duty at the explicit direction of the State. It must be a duty specifically laid upon the official. In other words, it can not be done by an official in the incidental, normal course of his regular office, or on his own responsibility while outside of the customary duties of his office. And this is the construction that the Supreme Court of Spain has placed upon the parent section (1903) in the Spanish Civil Code:

> The liability of the State is limited by article 1903 to a case wherein it acts through a special agent, and a special agent in the sense in which these words are employed is one who receives a specific mandate or commission, foreign to the functions of his office if he be a public official, in order that, on behalf of the State and obligating it as its mandatory, he execute the commission entrusted to him; this idea can not be extended to include an executive agent who is an employee of the active administration and who exercises under his liability the natural functions inherent in his office which are regulated by law and regulations. (Decision of the Supreme Court of Spain, May 18, 1904. In 98 Colección Completa de las Sentencias dictadas por el Tribunal Supremo, etc., pp. 389–399, Madrid, 1905.)

Hollander in no sense was a special agent, "particularly employed and particularly authorized to

do the particular act." (fol. 25.) He had no other power, except such as flowed from the laws governing the office of Treasurer, and he had no other duties except such as inhered in that office. Essential to the conception of a special agent is a distinct and explicit relation to the very thing complained of. In the nature of things, such agency must be created by higher executive order or by legislative authority. The record totally fails to present such a situation. There is no suggestion either in the evidence or the court's opinion that Hollander received the specific mandate or authority to do what he did do, either from the chief executive of the island, to wit, the Governor, or the legislature. He did what he did presumably because of his general duty to collect all the revenues that properly belonged to the island. He did it, in other words, as part of his general duties. If not, it was an act done wholly on his own unauthorized responsibility. And for such a tort, committed by an agent on a frolic of his own, the state never assumed liability.

The court below found difficulty in establishing the special agency of Hollander. It satisfied its skepticism on that score by a finding of ratification of Hollander's act from the fact that the Attorney General of Porto Rico appeared, nominally, for Porto Rico in defending the first suit against Hollander's action in the insular court.[3] From this fact, the

[3] In fact, the action was against the Treasurer and not against The People of Porto Rico, although the report of the case in the Supreme Court erroneously states that The People of Porto Rico was the party defendant. (R., 37–38.)

court thought that, in all fairness, it is too late, at this time, for the island "to plead or insist on its exemption from suit." (Fol. 25.) We submit that in this expression of the court's sense of fairness to the plaintiff is to be found the sole ground for any theory of ratification. Effective ratification, by subsequent conduct, must be equivalent to the initial creation of a special agency, such as is called for by section 1804 of the Civil Code. Such ratification must be unequivocal, must show a specific assumption by the Government, with all the attendant consequences, of the act of alleged wrong, and not merely the colorless conduct of officials protecting such rights as the State may have. Hollander having done what he did as Treasurer of Porto Rico, the appearance of the Attorney General, in defending such interest as Porto Rico had in Hollander's action, was merely rendering the ordinary legal support to an officer of the Government. In and of itself it did not imply any ratification of his act as the State's act and surely did not carry with it the extraordinary consequences of waiving a State's immunity from suit and the voluntary submission to the jurisdiction of the court in subsequent litigation. (See *Carr* v. *United States*, 98 U. S., 433, 438; *Stanley* v. *Schwalby*, 162 U. S., 255, 270.) Some specific act of approval surely must be necessary to spell ratification, e. g., some legislative act or some superior executive assumption of the act by deriving profit from it. Nothing of the sort appears in this case. On the contrary, as is pointed out by the court below, "it is unquestioned, we think,

from the record that the island itself never actually received any rent, profit, or usufruct from this land or any part of it." (See *Langford* v. *United States*, 101 U. S., 341; *New Orleans* v. *Gaines's Administrator*, 131 U. S., 191, 218, 219.)

POINT THREE.

If, however, the Island, under any theory of this case, was liable, under section 1804 of the Civil Code, such liability was long tolled at the time this suit was commenced.

Section 1869 of the Civil Code provides that—

> actions * * * for obligations arising from the fault or negligence mentioned in section 1803 prescribe in one year from the time the aggrieved persons had knowledge thereof.

A simple recital of dates shows that the present suit was brought much too late. The dispossession complained of began on September 4, 1900. The plaintiff established his title to the land by the decision of the Supreme Court of Porto Rico of June 22, 1904. He was actually reinstated into possession in December, 1905. The present action was not commenced until June 10, 1908. Surely the final declaration of the plaintiff's right and Hollander's wrong by the decision of the Supreme Court on June 22, 1904, is the beginning of the time that the aggrieved plaintiff "had knowledge of the fault" on which he based his action under section 1803. In other words, he delayed almost three years beyond the statutory period, after which the action is barred. Or, if the time should begin to run from the date when the effects of Hollander's wrong ceased, when the plain-

tiff again enjoyed full possession of his property, to wit, December, 1905, his action was begun one year and a half after it was tolled by the statute of limitations. The statute of limitations was duly pleaded below. (R., 11.) The court below was "of the belief that, under the circumstances, the court ought not to hold that the claim is barred by the one year's statute of limitations." (fol. 25.) No intimation is given as to "the circumstances" that the court had in mind, other than a laudable feeling of fairness that the Government of Porto Rico should make some compensation for the loss suffered by the plaintiff. In truth, this feeling of fairness to the plaintiff seems to be the underlying determination of the decision—at once the basis of spelling liability on the part of Porto Rico and refusing to regard the limitation surrounding a similar liability even of private persons. One may perhaps share the court's desire to make recompense for the loss incurred by the plaintiff through an official act, even though no gain thereby accrued to Porto Rico. At best, however, the forum for such claim of fairness is the legislature and not the court.

CONCLUSION.

THE DECISION OF THE COURT BELOW SHOULD BE REVERSED, WITH DIRECTIONS TO DISMISS THE CASE.

Respectfully submitted.

FELIX FRANKFURTER,
Law Officer, Bureau of Insular Affairs.

OCTOBER, 1913.

O

the line between innocent silence and felonious concealment.

Judgment affirmed.

MR. JUSTICE MCREYNOLDS took no part in the consideration and decision of this case.

PEOPLE OF PORTO RICO *v.* EMMANUEL, BARON DU LAURENS D'OISELAY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 4. Argued October 23, 1914.—Decided November 30, 1914.

Under § 35 of the Foraker Act of April 12, 1900, the jurisdiction of this court on appeals from the District Court of the United States for Porto Rico is confined to determining whether the facts found by that court support its judgment and whether there was material and prejudicial error in the admission or rejection of evidence manifested by exceptions properly certified.

In such a case, in the absence of a bill of exceptions, questions of admissibility of evidence are excluded and the review is confined to what appears upon the face of the pleadings and the findings. *Rosaly* v. *Graham*, 225 U. S. 584.

Under the Territorial Practice Act of 1874 which governed appeals to this court from Porto Rico taken under § 35 of the Foraker Act, proceedings for review in this court in actions at law as well as in equitable actions are by appeal and not by writ of error unless there was a jury trial.

The government of Porto Rico is of such a nature as to come within the general rule exempting a government, sovereign in its attributes, from being sued without its consent, *Porto Rico* v. *Rosaly*, 227 U. S. 270; but in this case, *quære* whether Porto Rico fairly raised the question of immunity or whether it did not consent to litigate the case on the merits.

An action against the government of Porto Rico for the wrongful act of

the Treasurer in registering private property as part of the public domain and preventing the collection of rents by the owner, is an action for fault or for negligence mentioned in § 1803, Civil Code, and the one year period of prescription obtains under § 1869, Civil Code of Porto Rico.

Quære, whether the period of prescription under § 1869, Civil Code of Porto Rico, begins to run from the time of knowledge of the wrongful act or from the time of knowledge of the damage consequent thereon.

5 Porto Rico Fed. Rep. 89, 362, reversed.

THE facts, which involve the jurisdiction of this court on appeals from the District Court of the United States for Porto Rico and the right to sue Porto Rico, and the construction and application of the statute of limitations of Porto Rico, are stated in the opinion.

Mr. Samuel T. Ansell, with whom *Mr. Felix Frankfurter*, *Mr. Foster V. Brown*, Attorney General of Porto Rico, and *Mr. Paul Charlton* were on the brief, for appellant.

Mr. Frederico Degetau for appellee, submitted.

MR. JUSTICE PITNEY delivered the opinion of the court.

This action was commenced July 23, 1908, in the United States District Court for Porto Rico by Pierre Emmanuel, Baron du Laurens d'Oiselay, a citizen of the Republic of France and a resident thereof, against the People of Porto Rico. His complaint alleged that he was the owner of an estate composed of 4133 cuerdas of land situate in the Municipality of Lares, acquired by him as a legacy from the Duchess de Mahon Crillon, who died in France in April, 1899; that until the year of her death the Duchess had been paying the taxes and receiving from her colonists a considerable annual income; that on September 4, 1900, the defendant, through the Treasurer of Porto Rico, decided that said property belonged to the Treasury of Porto Rico, and ordered among other things that the Duchess

be immediately eliminated from the assessment of the property, that the "terratenientes" (landholders or colonists) be made to appear in the assessments instead of the Duchess, and "that they proceed to deliver the deeds or titles of concessions that they might possess which gave them the right to the use and fruits of the land to be sent to the Treasury"; and that by these means defendant "wrongfully deprived your plaintiff of his ownership over said property and its rents, the said property having been recorded in the registry of the property in the name of the People of Porto Rico, the defendant herein, without having heard your petitioner, or even summoned him to be heard;" that in view of this action plaintiff, after having vainly tried to obtain satisfaction from defendant, was obliged to establish the validity of his titles before the courts; that he instituted a suit in the District Court of San Juan on January 30, 1901, against the defendant, and that court on August 1, 1902, decided that the lands referred to were the property of plaintiff, and ordered that the inscription made in the Registry in the name of the People of Porto Rico be canceled; that the People took an appeal to the Supreme Court of Porto Rico, and that court affirmed the decisions and confirmed the findings of the District Court by its opinion of May 23, 1904 (2 Castro P. R. Dec. 103; 7 P. R. 216); that after the question of title was decided, the People of Porto Rico did nothing to put plaintiff in possession of the property, the colonists were not willing to again pay rents to him, and he was obliged to resort to the courts to be put in possession of the lands; that by such litigation he did obtain possession, but that he was entitled to recover from defendant the fruits of which he had been deprived by defendant's action from the time he was unjustly deprived of his ownership until his property was delivered back to him; the period mentioned being from September, 1900, to December, 1905.

By demurrer and answer the People of Porto Rico interposed a number of defenses, and, among others, that the action was prescribed by virtue of the provisions of § 1869 of the Civil Code.

The cause came on for trial on the merits before the court without a jury, pursuant to a stipulation of the parties, with the result that judgment was rendered in favor of plaintiff for $7,450. (5 P. R. Fed. Rep. 89.) A motion for a new trial was denied (5 P. R. Fed. Rep. 362), and defendant appealed to this court.

In view of appellee's motion to dismiss, we may begin by saying that at the time the appeal was taken the act of April 12, 1900, known as the Foraker Act, was in force (c. 191, 31 Stat. 77, 85), by § 35 of which it was enacted that "Writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the District Court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the Supreme Courts of the Territories of the United States," etc. Writs of error and appeals from the Supreme Courts of the Territories were regulated by the act of April 7, 1874 (c. 80, 18 Stat. 27), by the first section of which the separate exercise of the common-law and chancery jurisdictions in the territorial courts was dispensed with, and the several codes and rules of practice adopted in the Territories respectively, in so far as they authorized a mingling of said jurisdictions or a uniform course of proceeding in all cases whether legal or equitable, were confirmed; and by the second section it was enacted: "That the appellate jurisdiction of the Supreme Court of the United States over the judgments and decrees of said territorial courts in cases of trial by jury shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have pre-

scribed or may hereafter prescribe: *Provided*, that on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court together with the transcript of the proceedings and judgment or decree."

Under this system (since superseded by § 244 of the Judicial Code of March 3, 1911, c. 231, 36 Stat. 1087, 1157), our jurisdiction was, and in the present case is, confined to determining whether the facts found by the Supreme Court of Porto Rico support its judgment, and whether there was material and prejudicial error in the admission or rejection of evidence manifested by exceptions properly certified. In the absence of a bill of exceptions, questions respecting the admissibility of evidence are of course excluded from our consideration, and the review is confined to what appears upon the face of the pleadings and the findings. *Rosaly* v. *Graham*, 227 U. S. 584, 590, and cases cited.

The motion to dismiss is in part based upon the ground that the bill of exceptions herein was not settled and signed until after the expiration of the term in which the new trial was denied, and that certain orders of the court relied upon by appellant as extending the time for settling the exceptions have no legal validity. We have examined the grounds upon which this contention rests, and have reached the conclusion that it must be overruled. We spend no further time upon it, since, in the view we take of the merits, the rulings on evidence shown by the bill of exceptions may be disregarded.

The motion to dismiss is based upon the further ground that the case, being an action at law, should have been brought to this court by writ of error, and not by appeal. But the provisions of the act of 1874, above mentioned,

render it clear that in legal as well as in equitable actions the proceedings for review must be by appeal, unless there was a trial by jury. The motion to dismiss is therefore denied.

Coming to the merits, the facts certified are as follows: In the year 1900, shortly after the American occupation of Porto Rico, the then Treasurer of the Island, Mr. J. H. Hollander, reached the conclusion that the land in question did not belong to plaintiff, who claimed to have inherited it from the Duchess de Mahon Crillon of France, but was public property, and he therefore, as Treasurer, caused the tenants living upon the land to be so notified and the property to be registered in the Registry of Property as belonging to the People of Porto Rico. Plaintiff protested vigorously against this, but without immediate result. In a short time, however, he produced such evidence of title to Mr. Hollander that the latter wrote him that he had better begin a suit against the People of Porto Rico and have the matter judicially determined. Plaintiff did file such a suit in the District Court at San Juan. The Attorney General of the Island and his assistant appeared and contested the action, but the decision was for the plaintiff. The Attorney General, on the part of the People, took an appeal to the Supreme Court of the Island, and that court in June, 1904, decided in favor of the plaintiff, affirming the decision of the lower court. (2 Castro P. R. Dec. 103; 7 P. R. 216.) From the time Mr. Hollander registered the property in the name of the People of Porto Rico until plaintiff was again put in possession of the land in the latter part of the year 1905 the tenants refused to pay rent to plaintiff, and the entire sum was lost to him except a few hundred pesos which he managed to collect after much expensive litigation against the tenants. The court found that Mr. Hollander was a special agent of the State for the purpose of the transactions in question, within the meaning of § 1804 of the

Civil Code of 1902; and further that his action was ratified by the Government of Porto Rico by refusing to restore plaintiff's land to him, by requesting and obliging him to bring a suit to establish his rights, and then by defending this suit to final judgment and appealing from that judgment to the Supreme Court of the Island. That the Government of the Island never actually received any rent, profit, or usufruct from the land or any portion of it; but that it injured plaintiff by depriving him of the right to the use and enjoyment of his property for about five years, in consequence of the deliberate but unauthorized registry of the land in the name of the People of Porto Rico, and by that action inducing his tenants to thereafter desist and refuse, as they did, from paying him his usual rents. The court found that the insular authorities caused damage to the plaintiff in at least the sum of $7,450, and for this amount judgment was entered, as already mentioned. It will be observed that there is nothing to show that the Government of Porto Rico, through its officers or otherwise, was at any time in possession of any part of the lands in question, and there is a distinct finding that the Government itself never actually received any rent, profit, or usufruct from the land or any portion of it.

We have recently decided that the Government of Porto Rico is of such nature as to come within the general rule exempting a government, sovereign in its attributes, from being sued without its consent (*Porto Rico* v. *Rosaly*, 227 U. S. 270). Upon the face of the present record it may be doubtful whether defendant fairly raised in the pleadings the question of its general immunity from action, or whether, on the other hand, its pleadings, construed as a whole, did not rather amount to a consent to litigate the merits. But upon the facts as pleaded and found we think the learned judge of the District Court very properly held that if plaintiff can legally recover, it must be by virtue of § 1804 of the Civil Code, which is cited also

as manifesting the Government's consent to be sued. The section must be read together with § 1803, with which it is inseparably connected. Both are set forth in the margin.[1]

[1] "SECTION 1803. A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done.

"SECTION 1804. The obligation imposed by the preceding section is demandable, not only for personal acts and omissions, but also for those of the persons for whom they should be responsible.

"The father, and on his death or incapacity the mother, is liable for the damages caused by the minors who live with them.

"Guardians are liable for the damages caused by minors or incapacitated persons who are under their authority and live with them.

"Owners or directors of an establishment or enterprise are equally liable for the damages caused by their employés in the service of the branches in which the latter may be employed or on account of their duties.

"The State is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding section shall be applicable.

"Finally, masters or directors of arts and trades are liable for the damages caused by their pupils or apprentices while they are under their custody.

"The liability referred to in this section shall cease when the persons mentioned therein prove that they employed all the diligence of a good father or [*sic*] a family to avoid the damage."

These sections are taken from Articles 1902 and 1903 of the Spanish Code of 1889, where the clause respecting the responsibility of the State reads as follows: "El Estado es responsable en este concepto cuando obra por mediación de un agente especial; pero no cuando el daño hubiese sido causado por el funcionario á quien propiamente corresponda la gestión practicada, en cuyo caso será aplicable lo dispuesto en el articulo anterior."

It was suggested upon the argument that a more satisfactory translation into English than that adopted in the Porto Rican Code is as follows: "The State is liable in this respect when it acts through the medium of a special agent, but not when the damage was caused by an official to whom the action taken properly pertained, in which case the provisions of the preceding article apply." In Walton's "Civil Law in

Assuming, however, that the facts certified in the findings, taken by themselves, show a liability on the part of the People of Porto Rico under these sections, still defendant, both by demurrer and by answer, set up prescription by virtue of the provisions of § 1869 of the Civil Code. That section, which is one of a series of sections relating to the prescription of actions, reads as follows:

"Section 1869.—The following prescribe in one year:

1.—Actions to recover or retain possession.

2.—Actions to demand civil liability for grave insults or calumny, and for obligations arising from the fault or negligence mentioned in § 1803, from the time the aggrieved person had knowledge thereof."

It seems to us clear that an action against the State, based upon the pertinent clause of § 1804, is an action to demand civil liability "for obligations arising from the fault or negligence mentioned in section 1803," within the meaning of § 1869. Section 1804 by its very terms imposes upon the principal, with respect to the acts of the representative, not any different obligation but the same obligation imposed by the preceding section. We say this, notwithstanding the somewhat peculiar form of expression in that part of § 1804 which exempts the State from liability when the damage is caused by the official to whom properly it pertained to do the act performed, viz.: the clause, "in which case the provisions of the preceding section shall be applicable." This cannot reasonably be interpreted as excluding the liability of the State under § 1803 in other cases, but is evidently intended to impose upon the official himself, in respect to damages

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Spain," p. 458, the following version is given: "The state is liable, in this sense, when it acts through a special agent, but not when the damage has been caused by the official to whom properly it pertains to do the act already done, in which case the provision of the preceding article shall apply." And see interpretation by Supreme Court of Spain in decision of May 18, 1904, 98 Jur. Civ. 390.

caused in the performance of his ordinary duties, a personal liability under the provisions of § 1803, leaving the State liable in the sense of that section when it acts through a special agent. No reason is suggested for limiting the prescription to one year in the case of a default or negligence attributable to defendant personally, and leaving the action unlimited when it is attributable to the fault of defendant's representative or agent.

Section 1869 being thus found to be applicable to such an action as the present, it only remains to ascertain and compare the pertinent dates. From his complaint herein and from the findings of the trial court it is plain that plaintiff had full knowledge of the wrongful acts of defendant's representative at least as soon as the time of the commencement of his former action against the People of Porto Rico, which was on January 30, 1901, and that the damage resulting from that wrongful conduct, and to recover which his present action is brought, was complete before the end of the year 1905. Evidently the damage was of such a character as to carry notice with it. As already mentioned, the present action was commenced in July, 1908. There is nothing in the record or the findings to explain or excuse this delay or to interrupt the prescription.

We are not advised of the grounds upon which the court below overruled the plea of prescription. In its opinion it simply said: "We are also of the belief that under the circumstances the court ought not to hold that the claim is barred by the one year statute of limitations, and of course no other is applicable to the facts." Counsel for appellee has not suggested any ground for avoiding the prescription—indeed, has made no argument upon the subject. We deem it clear that § 1869 applies, and that the action is therefore prescribed, and it follows that the judgment must be reversed, and the cause remanded for further proceedings in accordance with this opinion.

Under the facts of the case it is unnecessary to consider whether the period of prescription began to run when plaintiff first had knowledge of the alleged wrongful acts of Hollander, or only when he had knowledge of the damage consequent thereon. Upon this point, therefore, we express no opinion.

Judgment reversed.

MR. JUSTICE MCREYNOLDS took no part in the consideration or decision of this case.